

SECTION 2. 326 IAC 10-3 IS ADDED TO READ AS FOLLOWS:

**Rule 10-3. Nitrogen Oxides Budget Trading Program**

**326 IAC 10-3-1 Applicability**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

*This section establishes criteria to determine the sources to be included in the trading program.*

**Sec. 1. (a)** The following units shall be NO<sub>x</sub> budget units, and any source that includes one (1) or more units shall be a NO<sub>x</sub> budget source, and may elect to be subject to the requirements of this rule:

- (1) An electricity generating unit (EGU) as defined under section 2(18) of this rule.
- (2) An affected boiler as defined in section 2(4) of this rule.

**(b)** Notwithstanding subsection (a), a unit described under subsection (a) shall not be a NO<sub>x</sub> budget unit, if the unit meets the following requirements:

- (1) The unit has a federally enforceable permit that meets the requirements of subdivisions (2) through (4).
- (2) The federally enforceable permit includes terms and conditions that restrict the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter.
- (3) The federally enforceable permit includes terms and conditions that restrict the unit's operating hours during each control period to the number of hours, determined in accordance with subdivisions (4)(B) and (4)(C), that limits the unit's potential NO<sub>x</sub> mass emissions for the control period to twenty-five (25) tons or less.
- (4) For each control period under subdivision (2), the federally enforceable permit must do the following:
  - (A) Restrict the unit to burning only natural gas or fuel oil.
  - (B) Restrict the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential NO<sub>x</sub> mass emissions by the unit's maximum potential hourly NO<sub>x</sub> mass emissions.
  - (C) Require that the unit's potential NO<sub>x</sub> mass emissions shall be calculated as follows:
    - (i) Select the default NO<sub>x</sub> emission rate in 40 CFR 75.19(c)(1)(ii), Table 1b\* that would otherwise be applicable assuming that the unit burns only the type of fuel, for example only natural gas or only fuel oil, that has the highest default NO<sub>x</sub> emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).
    - (ii) Multiply the default NO<sub>x</sub> emission rate under item (i) by the unit's maximum rated hourly heat input. The owner or operator of the unit

may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 2(29) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(D) Require that the owner or operator of the unit shall retain records, on site at the source that includes the unit for a period of three (3) years and that shall be available upon request for an additional two (2) years, demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.

(E) Require that the owner or operator of the unit shall report the unit's hours of operation, treating any partial hour of operation as a whole hour of operation, during each control period to the department by November 1 of each year for which the unit is subject to the federally enforceable permit.

The unit shall be subject only to the requirements of this subsection starting with the effective date of the federally enforceable permit under subdivision (1).

(c) Within thirty (30) days after a final decision, the department shall notify the U.S. EPA in writing when a unit under subsection (a):

- (1) is issued a federally enforceable permit under subsection (b); or
- (2) whose federally enforceable permit issued by the department under subsection (b):
  - (A) is revised to remove any restriction;
  - (B) includes any restriction that is no longer applicable; or
  - (C) does not comply with any restriction.

(d) A unit described under subsection (b) shall be a NO<sub>x</sub> budget unit, subject to the requirements of this rule if one (1) of the following occurs for any control period:

- (1) the fuel use restriction under subsection (b)(4)(A) or the operating hours restriction under subsection (b)(4)(B) and (b)(4)(C) is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable; or
- (2) the unit does not comply with the fuel use restriction under subsection (b)(4)(A) or the operating hours restriction under subsection (b)(4)(B) and (b)(4)(C).

The unit shall be treated as commencing operation and, for a unit under subsection (a)(1), commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

**\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-3-1)**

**326 IAC 10-3-2 Definitions**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*This section provides definitions for use with the trading program.*

**Sec. 2.** For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

- (1) “Account certificate of representation” means the completed and signed submission required by section 6 of this rule for certifying the designation of a NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget source or a group of identified NO<sub>x</sub> budget sources who is authorized to represent the owners and operators of the source or sources and of the NO<sub>x</sub> budget units at the source or sources with regard to matters under the NO<sub>x</sub> budget trading program.
- (2) “Account number” means the identification number given by the U.S. EPA to each NO<sub>x</sub> allowance tracking system account.
- (3) “Acid rain emissions limitation” means, as defined in 40 CFR 72.2\*, a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program under Title IV of the Clean Air Act (CAA).
- (4) “Affected boiler” means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system that is not an electricity generating unit described under subdivision (18) and has a maximum design heat input of [XXX] million British thermal units per hour.
- (5) “Allocate” or “allocation” means the determination by the department or the U.S. EPA of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> budget unit or an allocation set-aside.
- (6) “Automated data acquisition and handling system (DAHS)” means that component of the CEMS, or other emissions monitoring system approved for use under 40 CFR 75, Subpart H\*, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by 40 CFR 75, Subpart H\*.
- (7) “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.
- (8) “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Public

**Law No. 101-549 (November 15, 1990)\*.**

**(9) “Combined cycle system” means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.**

**(10) “Combustion turbine” means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.**

**(11) “Commence commercial operation” means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation subject to the following:**

**(A) Except as provided in section 3 of this rule, for a unit that is a NO<sub>x</sub> budget unit under section 1 of this rule on the date the unit commences commercial operation, the date shall remain the unit’s date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.**

**(B) Except as provided in section 3 or section 13 of this rule, for a unit that is not a NO<sub>x</sub> budget unit under section 1 of this rule on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> budget unit under section 1 of this rule shall be the unit’s date of commencement of commercial operation.**

**(12) “Commence operation” means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber subject to the following:**

**(A) Except as provided in section 3 of this rule, for a unit that is a NO<sub>x</sub> budget unit under section 1 of this rule on the date of commencement of operation, the date shall remain the unit’s date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.**

**(B) Except as provided in section 3 or section 13 of this rule, for a unit that is not a NO<sub>x</sub> budget unit under section 1 of this rule on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> budget unit under section 1 of this rule shall be the unit’s date of commencement of operation.**

**(13) “Common stack” means a single flue through which emissions from two (2) or more units are exhausted.**

**(14) “Compliance account” means a NO<sub>x</sub> allowance tracking system account, established by the U.S. EPA for a NO<sub>x</sub> budget unit under section 10 of this rule, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in which are held NO<sub>x</sub> allowances available for use by the unit for a control period for the purpose of meeting the unit’s NO<sub>x</sub> budget emissions limitation.**

**(15) “Compliance certification” means a submission to the department or the U.S. EPA, as appropriate, that is required under section 8 of this rule to report a NO<sub>x</sub>**

budget source's or a NO<sub>x</sub> budget unit's compliance or noncompliance with this rule and that is signed by the NO<sub>x</sub> authorized account representative in accordance with section 6 of this rule.

(16) "Continuous emission monitoring system (CEMS)" means the equipment required under 40 CFR 75, Subpart H\* to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for NO<sub>x</sub>. The following systems are component parts included, consistent with 40 CFR 75\*, in a continuous emission monitoring system:

(A) Flow monitor.

(B) Nitrogen oxides pollutant concentration monitors.

(C) Diluent gas monitor, oxygen or carbon dioxide, when the monitoring is required by 40 CFR 75, Subpart H\*.

(D) A continuous moisture monitor when the monitoring is required by 40 CFR 75, Subpart H\*.

(E) An automated data acquisition and handling system.

(17) "Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(18) "Electricity generating unit (EGU)" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system that, any time on or after January 1, 1995, serves a generator with a nameplate capacity of [XX MW] and sells any amount of electricity.

(19) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the NO<sub>x</sub> authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H\*.

(20) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

(21) "Excess emissions" means any tonnage of NO<sub>x</sub> emitted by a NO<sub>x</sub> budget unit during a control period that exceeds the NO<sub>x</sub> budget emissions limitation for the unit.

(22) "Fossil fuel" means any of the following:

(A) Natural gas.

(B) Petroleum.

(C) Coal.

(D) Any form of solid, liquid, or gaseous fuel derived from the above material.

(23) "Fossil fuel-fired" means, with regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, under any of the following scenarios:

(A) Fossil fuel actually combusted comprises more than fifty percent (50%) of the annual heat input on a British thermal unit (Btu) basis during any year starting in 1995. If a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

(B) Fossil fuel is projected to comprise more than fifty percent (50%) of the

annual heat input on a Btu basis during any year, provided that the unit shall be fossil fuel-fired as of the date, during the year, that the unit begins combusting fossil fuel.

(24) “General account” means a NO<sub>x</sub> allowance tracking system account, established under section 10 of this rule, that is not a compliance account or an overdraft account.

(25) “Generator” means a device that produces electricity.

(26) “Heat input” means the product, in million British thermal units per unit of time (MMBtu/time), of the following:

(A) The gross calorific value of the fuel, in British thermal units per pound (Btu/lb).

(B) The fuel feed rate into a combustion device, in mass of fuel per unit of time (lb/time), as measured, recorded, and reported to the U.S. EPA by the NO<sub>x</sub> authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H\*.

Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(27) “Life-of-the-unit, firm power contractual arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of the unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(28) “Maximum design heat input” means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(29) “Maximum potential hourly heat input” means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. The unit may use either of the following:

(A) 40 CFR 75, Appendix D\* to report heat input. Calculate this value in accordance with 40 CFR 75\*, using the maximum fuel flow rate and the maximum gross calorific value.

(B) A flow monitor and a diluent gas monitor. Report this value in accordance with 40 CFR 75\*, using the maximum potential flow rate and either of the following:

(i) The maximum carbon dioxide (CO<sub>2</sub>) concentration, in percent of CO<sub>2</sub>.

- (ii) The minimum oxygen (O<sub>2</sub>) concentration, in percent of O<sub>2</sub>.
- (30) “Maximum potential NO<sub>x</sub> emission rate” means:
  - (A) the emission rate of nitrogen oxides, in pounds per million British thermal units (lb/MMBtu);
  - (B) calculated in accordance with 40 CFR 75, Appendix F, Section 3\*;
  - (C) using the maximum potential nitrogen oxides concentration as defined in 40 CFR 75, Appendix A, Section 2\*; and
  - (D) either the:
    - (i) maximum oxygen (O<sub>2</sub>) concentration in percent of O<sub>2</sub>; or
    - (ii) minimum carbon dioxide (CO<sub>2</sub>) concentration in percent of CO<sub>2</sub> under all operating conditions of the unit except for unit start up, shutdown, and upsets.
- (31) “Maximum rated hourly heat input” means a unit-specific maximum hourly heat input, in million British thermal units (MMBtu), that is the higher of either the manufacturer’s maximum rated hourly heat input or the highest observed hourly heat input.
- (32) “Monitoring system” means any monitoring system that meets the requirements of 40 CFR 75, Subpart H\*, including the following:
  - (A) A continuous emissions monitoring system.
  - (B) An excepted monitoring system under 40 CFR 75.19\*.
  - (C) An alternative monitoring system.
- (33) “Most stringent state or federal NO<sub>x</sub> emissions limitation” means, with regard to a NO<sub>x</sub> budget opt-in source, the lowest NO<sub>x</sub> emissions limitation, in terms of pounds per million British thermal units (lb/MMBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.
- (34) “Nameplate capacity” means the maximum electrical generating output, in megawatt electrical (MWe), that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.
- (35) “Nitrogen oxides” or “NO<sub>x</sub>” means all oxides of nitrogen including, but not limited to, nitrogen oxide and nitrogen dioxide, but excluding nitrous oxide, collectively expressed as nitrogen dioxide.
- (36) “Non-title V permit” means a federally enforceable permit issued by the department under 326 IAC 2-8.
- (37) “NO<sub>x</sub> allowance” means an authorization by the department or the U.S. EPA under the nitrogen oxides (NO<sub>x</sub>) budget trading program to emit up to one (1) ton of NO<sub>x</sub> during the control period of the specified year or of any year thereafter.
- (38) “NO<sub>x</sub> allowance deduction” or “deduct NO<sub>x</sub> allowances” means the permanent withdrawal of NO<sub>x</sub> allowances by the U.S. EPA from a NO<sub>x</sub> allowance tracking system compliance account or overdraft account to account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> budget unit for a control period, determined in accordance with 40 CFR 75, Subpart H\*, or for any other allowance surrender obligation under this rule.
- (39) “NO<sub>x</sub> allowances held” or “hold NO<sub>x</sub> allowances”

means the NO<sub>x</sub> allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 10 and 11 of this rule, in a NO<sub>x</sub> allowance tracking system account.

(40) “NO<sub>x</sub> allowance tracking system” means the system by which the U.S. EPA records allocations, deductions, and transfers of NO<sub>x</sub> allowances under the NO<sub>x</sub> budget trading program.

(41) “NO<sub>x</sub> allowance tracking system account” means an account in the NO<sub>x</sub> allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of NO<sub>x</sub> allowances.

(42) “NO<sub>x</sub> allowance transfer deadline” means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO<sub>x</sub> allowances may be submitted for recordation in a NO<sub>x</sub> budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO<sub>x</sub> budget emissions limitation for the control period immediately preceding the deadline.

(43) “NO<sub>x</sub> authorized account representative” means either of the following:

(A) For a NO<sub>x</sub> budget source or NO<sub>x</sub> budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO<sub>x</sub> budget units at the source, in accordance with section 6 of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> budget trading program; or

(B) For a general account, the natural person who is authorized, in accordance with section 10 of this rule, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.

(44) “NO<sub>x</sub> budget emissions limitation” means, for a NO<sub>x</sub> budget unit, the tonnage equivalent of the NO<sub>x</sub> allowances available for compliance deduction for the unit and for a control period under sections 10(i) and 10(k) of this rule, adjusted by any deductions of the NO<sub>x</sub> allowances for any of the following reasons:

(A) To account for actual utilization under section 9(e) of this rule for the control period.

(B) To account for excess emissions for a prior control period under section 10(i)(5) of this rule.

(C) To account for withdrawal from the NO<sub>x</sub> budget trading program.

(D) For a change in regulatory status, for a NO<sub>x</sub> budget opt-in source under sections 13(g) through 13(i) of this rule.

(45) “NO<sub>x</sub> budget opt-in permit” means a NO<sub>x</sub> budget permit covering a NO<sub>x</sub> budget opt-in source.

(46) “NO<sub>x</sub> budget opt-in source” means a source that includes one (1) or more NO<sub>x</sub> budget units:

(A) that has elected to become a NO<sub>x</sub> budget source under the NO<sub>x</sub> budget trading program; and

(B) whose NO<sub>x</sub> budget opt-in permit has been issued and is in effect under section 13 of this rule.

(47) “NO<sub>x</sub> budget permit” means the legally binding and federally enforceable



written document, or portion of the document;

(A) issued by the department under this rule, including any permit revisions;  
and

(B) specifying the NO<sub>x</sub> budget trading program requirements applicable to the following:

(i) A NO<sub>x</sub> budget source.

(ii) Each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source.

(iii) The owners and operators and the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit.

(48) “NO<sub>x</sub> budget source” means a source that includes one (1) or more NO<sub>x</sub> budget units.

(49) “NO<sub>x</sub> budget trading program” means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and pursuant to 40 CFR 51.121\*, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(50) “NO<sub>x</sub> budget unit” means a unit that is subject to the NO<sub>x</sub> budget trading program emissions limitation under sections 1(a) or 13(a) of this rule.

(51) “Operating” means, with regard to a unit under sections 7(c)(4)(B) and 13(a) of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO<sub>x</sub> budget permit under section 13(d) of this rule.

(52) “Operator” means any person who operates, controls, or supervises a NO<sub>x</sub> budget unit, a NO<sub>x</sub> budget source, or a unit for which an application for a NO<sub>x</sub> budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of a unit or source.

(53) “Opt-in” means to elect to become a NO<sub>x</sub> budget unit under the NO<sub>x</sub> budget trading program through a final, effective NO<sub>x</sub> budget opt-in permit under section 13 of this rule.

(54) “Overdraft account” means the NO<sub>x</sub> allowance tracking system account, established by the U.S. EPA under section 10 of this rule, for each NO<sub>x</sub> budget source where there are two (2) or more NO<sub>x</sub> budget units.

(55) “Owner” means any of the following persons:

(A) Any holder of any portion of the legal or equitable title in a NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(B) Any holder of a leasehold interest in a NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(C) Any purchaser of power from a NO<sub>x</sub> budget unit or from a unit for which an application for a NO<sub>x</sub> budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person

who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO<sub>x</sub> budget unit or the unit for which an application for a NO<sub>x</sub> budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(D) With respect to any general account, any person who has an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the binding agreement for the NO<sub>x</sub> authorized account representative to represent that person's ownership interest with respect to NO<sub>x</sub> allowances.

(56) “Receive” or “receipt of” means, when referring to the department or the U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or the U.S. EPA in the regular course of business.

(57) “Recordation”, “record”, or “recorded” means, with regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub> allowances by the U.S. EPA from one (1) NO<sub>x</sub> allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(58) “Reference method” means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 60, Appendix A\*.

(59) “Serial number” means, when referring to NO<sub>x</sub> allowances, the unique identification number assigned to each NO<sub>x</sub> allowance by the U.S. EPA, under sections 10(e) through 10(g) of this rule.

(60) “Source” means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA\*, a source, including a source with multiple units, shall be considered a single facility.

(61) “Trading program budget” means the total number of NO<sub>x</sub> tons apportioned to all NO<sub>x</sub> budget units, in accordance with the NO<sub>x</sub> budget trading program, for use in a given control period.

(62) “Submit” or “serve” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and delivery.

Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(63) “Title V operating permit” means a permit issued under 326 IAC 2-7.

(64) “Title V operating permit regulations” means the rules under 326 IAC 2-7.

(65) “Ton” or “tonnage” means any short ton, two thousand (2,000) pounds. For the purpose of determining compliance with the NO<sub>x</sub> budget emissions limitation,

total tons for a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 CFR 75, Subpart H\*, with any remaining fraction of a ton equal to or greater than five-tenths (0.50) ton deemed to equal one (1) ton and any fraction of a ton less than five-tenths (0.50) ton deemed to equal zero (0) tons.

(66) “Unit” means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(67) “Unit load” means the total or gross output of a unit in any control period, or other specified time period, produced by combusting a given heat input of fuel, expressed in terms of either of the following:

(A) The total electrical generation (MWe) produced by the unit, including generation for use within the plant.

(B) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

(68) “Unit operating day” means a calendar day in which a unit combusts any fuel.

(69) “Unit operating hour” or “hour of unit operation” means any hour, or fraction of an hour, during which a unit combusts any fuel.

(70) “Utilization” means the heat input, expressed in million British thermal units per unit of time, for a unit. The unit’s total heat input for the control period in each year shall be determined in accordance with 40 CFR 75\* if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR 75\* for the year, or shall be based on the best available data reported to the U.S. EPA for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75\* for the year.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-2*)

### **326 IAC 10-3-3 Retired unit exemption**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

*This section establishes the requirements that must be met by a source that wants to have a unit or units exempted from the trading program. The section includes emission prohibitions and permit requirements.*

**Sec. 3. (a)** This section applies to any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in source, that is permanently retired.

**(b)** Any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in source, that is permanently retired shall be exempt from the NO<sub>x</sub> budget trading program, except for the

provisions of this section and sections 1, 2, 5, 9, 10, and 11 of this rule.

(c) An exemption under this section shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO<sub>x</sub> authorized account representative, authorized in accordance with section 6, shall submit a statement to the department and the U.S. EPA. The statement shall state, in a format prescribed by the department, that the unit:

- (1) is permanently retired; and
- (2) shall comply with the requirements of subsection (e).

(d) After receipt of the notice under subsection (c), the department shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subsections (b) and (e).

(e) A unit exempt under this section shall comply with the following provisions:

- (1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
- (2) The owners and operators of the unit shall be allocated allowances in accordance with section 9 of this rule.
- (3) If the unit is located at a source that is required, or but for this exemption would be required, to have an operating permit under 326 IAC 2-7, the unit shall not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under section 7(c) of this rule for the unit not less than eighteen (18) months prior to the latter of:
  - (A) May 1, 2003; or
  - (B) the date on which the unit is to first resume operation.
- (4) If the unit is located at a source that is required, or but for this exemption would be required, to have a FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days prior to the latter of:
  - (A) May 1, 2003; or
  - (B) the date on which the unit is to first resume operation.
- (5) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative shall comply with the requirements of the NO<sub>x</sub> budget trading program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.
- (6) A source that includes a unit that is exempt under this section is not eligible to be a NO<sub>x</sub> budget opt-in source under section 13 of this rule.
- (7) The owners and operators shall retain records at the source demonstrating that the unit is permanently retired for a period of three (3) years and the records shall be available upon request for an additional two (2) years. The five (5) year period for keeping records may be extended for cause, at any time prior to the end of the

period, in writing by the department or the U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired.

(8) A unit exempt under subsection (b) shall lose its exemption on the earlier of the following dates:

(A) The date on which the NO<sub>x</sub> authorized account representative submits a NO<sub>x</sub> budget permit application under subdivision (2) or (3).

(B) The date on which the NO<sub>x</sub> authorized account representative is required under subdivision (2) or (3) to submit a NO<sub>x</sub> budget permit application.

For the purpose of applying monitoring requirements under 40 CFR 75, Subpart H\*, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-3*)

#### **326 IAC 10-3-4 Standard requirements**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

*This section establishes standard requirements concerning permits, monitoring, excess emissions, record keeping and reporting requirements, and liability.*

(a) The owners, operators, and the NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source shall comply with the following permit requirements:

(1) The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub> budget unit required to have a federally enforceable permit at the source shall submit the following:

(A) A complete NO<sub>x</sub> budget permit application under section 7(c) of this rule to the department in accordance with the deadlines specified in section 7(b) of this rule.

(B) Any supplemental information that the department determines is necessary in order to review a NO<sub>x</sub> budget permit application in a timely manner and issue or deny a NO<sub>x</sub> budget permit.

(2) The owners and operators of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub> budget unit required to have a federally enforceable permit at the source shall have a NO<sub>x</sub> budget permit and operate the unit in compliance with the NO<sub>x</sub> budget permit.

(3) The owners and operators of a NO<sub>x</sub> budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO<sub>x</sub> budget permit application, nor to have a NO<sub>x</sub> budget permit, under section 7 of this rule for

the NO<sub>x</sub> budget source.

**(b) The owners and operators of each NO<sub>x</sub> budget source shall comply with the following monitoring requirements:**

- (1) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall comply with the monitoring requirements of 40 CFR 75, Subpart H\*.**
- (2) The emissions measurements recorded and reported in accordance with 40 CFR 75, Subpart H\* shall be used to determine compliance by the unit with the NO<sub>x</sub> budget emissions limitation under subsection (c).**

**(c) The owners and operators of each NO<sub>x</sub> budget source shall comply with the following NO<sub>x</sub> requirements:**

- (1) The owners and operators of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall hold NO<sub>x</sub> allowances available for compliance deductions under section 10(i) of this rule, as of the NO<sub>x</sub> allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO<sub>x</sub> emissions for the control period from the unit, as determined in accordance with 40 CFR 75, Subpart H\*, plus any amount necessary to account for actual utilization under section 9(e) of this rule for the control period.**
- (2) Each ton of NO<sub>x</sub> emitted in excess of the NO<sub>x</sub> budget emissions limitation shall constitute a separate violation of the Clean Air Act (CAA) and this rule.**
- (3) A NO<sub>x</sub> budget unit shall be subject to the requirements under subdivision (1) starting on the latter of:**
  - (A) May 1, 2003; or**
  - (B) the date on which the unit commences operation.**
- (4) NO<sub>x</sub> allowances shall be held in, deducted from, or transferred among NO<sub>x</sub> allowance tracking system accounts in accordance with sections 9, 10, 11, and 13 of this rule.**
- (5) A NO<sub>x</sub> allowance shall not be deducted, in order to comply with the requirements under subdivision (1), for a control period in a year prior to the year for which the NO<sub>x</sub> allowance was allocated.**
- (6) A NO<sub>x</sub> allowance allocated under the NO<sub>x</sub> budget trading program is a limited authorization to emit one (1) ton of NO<sub>x</sub> in accordance with the NO<sub>x</sub> budget trading program. No provision of the NO<sub>x</sub> budget trading program, the NO<sub>x</sub> budget permit application, the NO<sub>x</sub> budget permit, or an exemption under section 3 of this rule and no provision of law shall be construed to limit the authority of the U.S. EPA or the department to terminate or limit the authorization.**
- (7) A NO<sub>x</sub> allowance allocated under the NO<sub>x</sub> budget trading program does not constitute a property right.**
- (8) Upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, every allocation, transfer, or deduction of a NO<sub>x</sub> allowance to or from a NO<sub>x</sub> budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO<sub>x</sub> budget permit of**

the NO<sub>x</sub> budget unit by operation of law without any further review.

**(d) The owners and operators of a NO<sub>x</sub> budget unit that has excess emissions in any control period shall do the following:**

- (1) Surrender the NO<sub>x</sub> allowances required for deduction under section 10(i)(5) of this rule.**
- (2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under section 10(i)(7) of this rule.**

**(e) The owners and operators of each NO<sub>x</sub> budget source shall comply with the following record keeping and reporting requirements:**

**(1) Unless otherwise provided, the owners and operators of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall keep on site at the source each of the following documents for a period of three (3) years and the documents shall be available upon request for an additional two (2) years. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the department or the U.S. EPA:**

**(A) The account certificate of representation for the NO<sub>x</sub> authorized account representative for the source and each NO<sub>x</sub> budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 6(h) of this rule. The certificate and documents shall be retained on site at the source beyond the five (5) year period until the documents are superseded because of the submission of a new account certificate of representation changing the NO<sub>x</sub> authorized account representative.**

**(B) All emissions monitoring information, in accordance with 40 CFR 75, Subpart H\*; provided that to the extent that 40 CFR 75, Subpart H\* provides for a three (3) year period for record keeping, the three (3) year period shall apply.**

**(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO<sub>x</sub> budget trading program.**

**(D) Copies of all documents used to complete a NO<sub>x</sub> budget permit application and any other submission under the NO<sub>x</sub> budget trading program or to demonstrate compliance with the requirements of the NO<sub>x</sub> budget trading program.**

**(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall submit the reports and compliance certifications required under the NO<sub>x</sub> budget trading program, including those under section 8, 12, or 13 of this rule.**

**(f) The owners and operators of each NO<sub>x</sub> budget source shall be liable as follows:**

**(1) Any person who knowingly violates any requirement or prohibition of the NO<sub>x</sub> budget trading program, a NO<sub>x</sub> budget permit, or an exemption under section 3 of this rule shall be subject to enforcement pursuant to applicable state or federal law.**

- (2) Any person who knowingly makes a false material statement in any record, submission, or report under the NO<sub>x</sub> budget trading program shall be subject to criminal enforcement pursuant to the applicable state or federal law.
- (3) No permit revision shall excuse any violation of the requirements of the NO<sub>x</sub> budget trading program that occurs prior to the date that the revision takes effect.
- (4) Each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit shall meet the requirements of the NO<sub>x</sub> budget trading program.
- (5) Any provision of the NO<sub>x</sub> budget trading program that applies to a NO<sub>x</sub> budget source, including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source, shall also apply to the owners and operators of the source and of the NO<sub>x</sub> budget units at the source.
- (6) Any provision of the NO<sub>x</sub> budget trading program that applies to a NO<sub>x</sub> budget unit, including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit, shall also apply to the owners and operators of the unit. Except with regard to the requirements applicable to units with a common stack under 40 CFR 75, Subpart H\*, the owners and operators and the NO<sub>x</sub> authorized account representative of one (1) NO<sub>x</sub> budget unit shall not be liable for any violation by any other NO<sub>x</sub> budget unit of which they are not owners or operators or the NO<sub>x</sub> authorized account representative and that is located at a source of which they are not owners or operators or the NO<sub>x</sub> authorized account representative.

(g) No provision of the NO<sub>x</sub> budget trading program, a NO<sub>x</sub> budget permit application, a NO<sub>x</sub> budget permit, or an exemption under section 3 of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source or NO<sub>x</sub> budget unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the CAA.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-4*)

#### **326 IAC 10-3-5 Computation of time**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*General language that establishes procedures for calculating the beginning and ending of time periods and the effect of holidays and weekends on calculating time periods.*

(a) Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> budget trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.



(b) Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> budget trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO<sub>x</sub> budget trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. (*Air Pollution Control Board; 326 IAC 10-3-5*)

**326 IAC 10-3-6 NO<sub>x</sub> authorized account representative for NO<sub>x</sub> budget sources**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*This section establishes requirements concerning the selection of an authorized account representative and alternate authorized account representative. The section includes requirements for submittals, such as certifications, what is required for certificates of account representation, objection procedures, and procedures for changing account representatives and others.*

(a) Except as provided under subsection (f), each NO<sub>x</sub> budget source, including all NO<sub>x</sub> budget units at the source, shall have one (1) and only one (1) NO<sub>x</sub> authorized account representative, with regard to all matters under the NO<sub>x</sub> budget trading program concerning the source or any NO<sub>x</sub> budget unit at the source.

(b) The NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source shall be selected by an agreement binding on the owners and operators of the source and all NO<sub>x</sub> budget units at the source.

(c) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), the NO<sub>x</sub> authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO<sub>x</sub> budget source represented and each NO<sub>x</sub> budget unit at the source in all matters pertaining to the NO<sub>x</sub> budget trading program, not withstanding any agreement between the NO<sub>x</sub> authorized account representative and the owners and operators. The owners and operators shall be bound by any decision or order issued to the NO<sub>x</sub> authorized account representative by the department, the U.S. EPA, or a court regarding the source or unit.

(d) No NO<sub>x</sub> budget permit shall be issued, and no NO<sub>x</sub> allowance tracking system account shall be established for a NO<sub>x</sub> budget unit at a source, until the U.S. EPA has received a complete account certificate of representation under subsection (h) for a NO<sub>x</sub> authorized account representative of the source and the NO<sub>x</sub> budget units at the source.

(e) The following shall apply to a submission made under the NO<sub>x</sub> budget trading program:

(1) Each submission under the NO<sub>x</sub> budget trading program shall be submitted, signed, and certified by the NO<sub>x</sub> authorized account representative for each NO<sub>x</sub> budget source on behalf of which the submission is made. Each submission shall include the following certification statement by the NO<sub>x</sub> authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO<sub>x</sub> budget sources or NO<sub>x</sub> budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The department shall accept or act on a submission made on behalf of the owner or operators of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a NO<sub>x</sub> budget source chose to designate an alternate NO<sub>x</sub> authorized account representative:

(1) An account certificate of representation may designate one (1) and only one (1) alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative. The agreement by which the alternate NO<sub>x</sub> authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative.

(2) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), any representation, action, inaction, or submission by the alternate NO<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO<sub>x</sub> authorized account representative.

(3) Except in this subsection, subsections (a), (g), (h), and sections 10(c) through 10(e) of this rule, whenever the term NO<sub>x</sub> authorized account representative is used in this rule, the term shall be construed to include the alternate NO<sub>x</sub> authorized account representative.

(g) The following shall apply when changing the NO<sub>x</sub> authorized account representative, the alternate NO<sub>x</sub> authorized account representative or there are changes in the owners and operators:

(1) The NO<sub>x</sub> authorized account representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous NO<sub>x</sub> authorized account representative prior to the time and date when the U.S. EPA receives the

superseding account certificate of representation shall be binding on the new NO<sub>x</sub> authorized account representative and the owners and operators of the NO<sub>x</sub> budget source and the NO<sub>x</sub> budget units at the source.

(2) The alternate NO<sub>x</sub> authorized account representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous alternate NO<sub>x</sub> authorized account representative prior to the time and date when the U.S. EPA receives the superseding account certificate of representation shall be binding on the new alternate NO<sub>x</sub> authorized account representative and the owners and operators of the NO<sub>x</sub> budget source and the NO<sub>x</sub> budget units at the source.

(3) Changes in the owners and operators shall be made as follows:

(A) In the event a new owner or operator of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit is not included in the list of owners and operators submitted in the account certificate of representation, the new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the department or the U.S. EPA, as if the new owner or operator were included in the list.

(B) Within thirty (30) days following any change in the owners and operators of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit, including the addition of a new owner or operator, the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

(h) A complete account certificate of representation for a NO<sub>x</sub> authorized account representative or an alternate NO<sub>x</sub> authorized account representative shall include the following elements in a format prescribed by the department:

(1) Identification of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative.

(3) A list of the owners and operators of the NO<sub>x</sub> budget source and of each NO<sub>x</sub> budget unit at the source.

(4) The following certification statement by the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative: "I certify that I was selected as the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source. I certify that I have all the necessary authority to carry out my duties and

responsibilities under the NO<sub>x</sub> budget trading program on behalf of the owners and operators of the NO<sub>x</sub> budget source and of each NO<sub>x</sub> budget unit at the source and that each owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department, the U.S. EPA, or a court regarding the source or unit.”

(5) The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(i) The following shall apply to an objection concerning the NO<sub>x</sub> authorized account representative:

(1) Once a complete account certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA shall rely on the account certificate of representation unless and until a superseding complete account certificate of representation under subsection (h) is received by the department or the U.S. EPA.

(2) Except as provided in subsection (g)(1) and (g)(2), no objection or other communication submitted to the department or the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative shall affect any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or the finality of any decision or order by the department or the U.S. EPA under the NO<sub>x</sub> budget trading program.

(3) Neither the department nor the U.S. EPA shall adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO<sub>x</sub> authorized account representative, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.

*(Air Pollution Control Board; 326 IAC 10-3-6)*

### **326 IAC 10-3-7 Permit requirements**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*This section establishes NO<sub>x</sub> budget permit requirements for sources in the trading program. Requirements include permit administration procedures, submittal dates for permit applications, requirements for a complete application, incorporation of allowance transfers, allocations, and deductions, effective dates, and permit revision procedures.*

(a) For each NO<sub>x</sub> budget source required to have a federally enforceable permit, the permit shall include a NO<sub>x</sub> budget permit administered by the department as follows:

(1) For NO<sub>x</sub> budget sources required to have a Part 70 operating permit under 326

IAC 2-7, the NO<sub>x</sub> budget portion of the Part 70 permit shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section or section 13 of this rule.

(2) For NO<sub>x</sub> budget sources required to have a FESOP permit, the NO<sub>x</sub> budget portion of the FESOP permit shall be administered in accordance with 326 IAC 2-8, except as provided otherwise by this section or section 13 of this rule.

(3) The applicable provisions of 326 IAC 2-7 and 326 IAC 2-8 may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, state review, and review by the U.S. EPA.

(4) Each NO<sub>x</sub> budget permit, including a draft or proposed NO<sub>x</sub> budget permit, if applicable, shall contain all applicable NO<sub>x</sub> budget trading program requirements and shall be a complete and segregable portion of the permit.

(b) The NO<sub>x</sub> authorized account representative of any NO<sub>x</sub> budget source required to have a federally enforceable permit shall submit to the department a complete NO<sub>x</sub> budget permit application under subsection (c) as follows:

(1) For NO<sub>x</sub> budget sources required to have a Part 70 operating permit under 326 IAC 2-7 the following shall apply:

(A) For any source, with one (1) or more NO<sub>x</sub> budget units that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering the NO<sub>x</sub> budget units to the department at least eighteen (18) months before May 1, 2003.

(B) For any source, with one (1) or more NO<sub>x</sub> budget unit that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering each NO<sub>x</sub> budget unit to the department at least eighteen (18) months before the latter of

(i) May 1, 2003; or

(ii) the date on which the NO<sub>x</sub> budget unit commences operation.

(C) For permit renewal, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with 326 IAC 2-7-4(a)(1)(D).

(2) For NO<sub>x</sub> budget sources required to have a FESOP permit under 326 IAC 2-8 the following shall apply:

(A) For any source, with one (1) or more NO<sub>x</sub> budget units that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering each NO<sub>x</sub> budget units to the department at least two hundred seventy (270) days before May 1, 2003.

(B) For any source, with one (1) or more NO<sub>x</sub> budget units that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account

representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering each NO<sub>x</sub> budget unit to the department at least two hundred seventy (270) days before the latter of:

(i) May 1, 2003; or

(ii) the date on which the NO<sub>x</sub> budget unit commences operation.

(C) For permit renewal, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with 326 IAC 2-8-3(h).

(c) In addition to the requirements of 326 IAC 2-7-4(c) or 326 IAC 2-8-3(c), a complete NO<sub>x</sub> budget permit application shall include the following elements concerning the NO<sub>x</sub> budget source for which the application is submitted, in a format prescribed by the department:

(1) Identification of the NO<sub>x</sub> budget source, including plant name and the Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration, if applicable.

(2) Identification of each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source and whether it is a NO<sub>x</sub> budget unit under section 1(a) or under section 13 of this rule.

(3) The standard requirements under section 4 of this rule.

(4) For each NO<sub>x</sub> budget opt-in unit at the NO<sub>x</sub> budget source, the following certification statements by the NO<sub>x</sub> authorized account representative:

(A) "I certify that each unit for which this permit application is submitted under 326 IAC 10-3-13 is not a NO<sub>x</sub> budget unit under 326 IAC 10-3-2(a) and is not covered by a retired unit exemption under 326 IAC 10-3-3 that is in effect."

(B) If the application is for an initial NO<sub>x</sub> budget opt-in permit, "I certify that each unit for which this permit application is submitted under 326 IAC 10-3-13 is currently operating, as that term is defined under 326 IAC 10-3-1(49)."

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, each NO<sub>x</sub> budget permit, including any draft or proposed NO<sub>x</sub> budget permit, if applicable, shall contain, in a format prescribed by the department, all elements required for a complete NO<sub>x</sub> budget permit application under subsection (c) as approved or adjusted by the department.

(e) Each NO<sub>x</sub> budget permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, every allocation, transfer, or deduction of a NO<sub>x</sub> allowance to or from the compliance accounts of the NO<sub>x</sub> budget units covered by the permit or the overdraft account of the NO<sub>x</sub> budget source covered by the permit.

(f) Notwithstanding IC 13-15-5, the initial NO<sub>x</sub> budget permit covering a NO<sub>x</sub>

budget unit for which a complete NO<sub>x</sub> budget permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) Except as provided in subsection (e), the department shall revise the NO<sub>x</sub> budget permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a NO<sub>x</sub> budget source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a NO<sub>x</sub> budget source with a FESOP permit.

(Air Pollution Control Board; 326 IAC 10-3-7)

### **326 IAC 10-3-8 Compliance certification**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*This section establishes the requirements for compliance certifications. This includes the date for submittal of certification reports, elements that must be included in the reports, the information required to be included in the certification by the authorized account representative and actions by the U.S. EPA and IDEM.*

(a) For each control period in which one (1) or more NO<sub>x</sub> budget units at a source are subject to the NO<sub>x</sub> budget emissions limitation, the NO<sub>x</sub> authorized account representative of the source shall submit to the department and the U.S. EPA by November 30 of that year, a compliance certification report for each source covering all NO<sub>x</sub> budget units.

(b) The NO<sub>x</sub> authorized account representative shall include in the compliance certification report under subsection (a) the following elements, in a format prescribed by the department, concerning each NO<sub>x</sub> budget unit at the source and subject to the NO<sub>x</sub> budget emissions limitation for the control period covered by the report:

(1) Identification of each NO<sub>x</sub> budget unit.

(2) At the NO<sub>x</sub> authorized account representative's option, the serial numbers of the NO<sub>x</sub> allowances that are to be deducted from each unit's compliance account under section 10(k) of this rule for the control period.

(3) At the NO<sub>x</sub> authorized account representative's option, for units sharing a common stack and having NO<sub>x</sub> emissions that are not monitored separately or apportioned in accordance with 40 CFR 75, Subpart H\*, the percentage of allowances that is to be deducted from each unit's compliance account under section 10(k)(8) of this rule.

(4) The compliance certification under subsection (c).

(c) In the compliance certification report under subsection (a), the NO<sub>x</sub> authorized account representative shall certify, based on reasonable inquiry of those persons with

primary responsibility for operating the source and the NO<sub>x</sub> budget units at the source in compliance with the NO<sub>x</sub> budget trading program, whether each NO<sub>x</sub> budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO<sub>x</sub> budget trading program applicable to the unit, including the following:

- (1) Whether the unit was operated in compliance with the NO<sub>x</sub> budget emissions limitation.
- (2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO<sub>x</sub> emissions to the unit, in accordance with 40 CFR 75, Subpart H\*.
- (3) Whether all the NO<sub>x</sub> emissions from the unit, or a group of units, including the unit, using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with 40 CFR 75, Subpart H\*. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made.
- (4) Whether the facts that form the basis for certification under 40 CFR 75, Subpart H\* of each monitor at the unit or a group of units, including the unit, using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under 40 CFR 75, Subpart H\*, if any, has changed.
- (5) If a change is required to be reported under subdivision (4), the NO<sub>x</sub> authorized account representative shall specify the following:
  - (A) The nature of the change.
  - (B) The reason for the change.
  - (C) When the change occurred.
  - (D) How the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

(d) The department or the U.S. EPA may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> budget trading program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(e) The U.S. EPA may deduct NO<sub>x</sub> allowances from or transfer NO<sub>x</sub> allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection (a).

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis,



**326 IAC 10-3-9 NO<sub>x</sub> allowance allocations**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

*This section establishes the procedures to be used by IDEM when allocating NO<sub>x</sub> allowances to sources in the trading program. The section includes deadlines for IDEM to have completed allowance allocations, equations to be used when allocating allowances to participating sources, the data to be used in the allocation equation, requirements for establishing set-aside allocations for new sources, and procedures for allocating allowances that remain in the set-aside accounts.*

**Sec. 9. (a) The trading program budget allocated by the department under subsection (c) for a control period shall equal the total number of tons of NO<sub>x</sub> emissions apportioned to the NO<sub>x</sub> budget units under section 1 of this rule for the control period, as determined by the procedures in this section. The total number of tons of NO<sub>x</sub> emissions that are available for allocation as NO<sub>x</sub> allowances under this section as follows:**

- (1) Forty-six thousand six hundred twenty-seven (46,627) tons for electricity generating units; and**
- (2) Twelve thousand five hundred sixty-seven (12,567) tons for affected boilers.**

**(b) The department shall allocate NO<sub>x</sub> allowances to NO<sub>x</sub> budget units according to the following schedule:**

- (1) By September 30, 1999, the department shall submit to the U.S. EPA the NO<sub>x</sub> allowance allocations, in accordance with subsection (c), for the control periods in 2003, 2004, and 2005.**
- (2) By April 1, 2003 and April 1 of each year thereafter, the department shall submit to the U.S. EPA the NO<sub>x</sub> allowance allocations, in accordance with subsection (c), for the control period in the year that is three (3) years after the year of the applicable deadline for submission under this subdivision. If the department fails to submit to the U.S. EPA the NO<sub>x</sub> allowance allocations in accordance with this subdivision, the U.S. EPA shall allocate, for the applicable control period, the same number of NO<sub>x</sub> allowances as were allocated for the preceding control period.**
- (3) By April 1, 2004 and April 1 of each year thereafter, the department shall submit to the U.S. EPA the NO<sub>x</sub> allowance allocations remaining in the allocation set-aside for the prior control period, in accordance with subsection (c).**

**(c) The heat input, in million British thermal units (MMBtu), used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> budget unit under section 1 of this rule shall be:**

- (1) For a NO<sub>x</sub> allowance allocation under subsection (b)(1):**
  - (A) the average of the two (2) highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997, if the unit is an electricity generating unit; or**

(B) the control period in 1995, if the unit is an affected boiler.

(2) For a NO<sub>x</sub> allowance allocation under subsection (b)(2), the unit's heat input for the control period in the year that is four (4) years before the year for which the NO<sub>x</sub> allocation is being calculated.

The unit's total heat input for the control period in each year shall be determined in accordance with 40 CFR 75\* if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR 75\* for the year, or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75\* for the year.

(d) For each control period under subsection (b), the department shall allocate to all NO<sub>x</sub> budget units that commenced operation before May 1 of the period used to calculate heat input under subsection (c)(1), a total number of NO<sub>x</sub> allowances equal to ninety-five percent (95%) in 2003, 2004, and 2005, or ninety-eight percent (98%) thereafter, of the tons of NO<sub>x</sub> emissions in the trading program budget apportioned in accordance with the following procedures:

(1) The department shall allocate NO<sub>x</sub> allowances to each electricity generating unit in an amount equaling [0.XX] pound per million British thermal units multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO<sub>x</sub> allowance, as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all electricity generating unit for a control period under subdivision (1) does not equal ninety-five percent (95%) in 2003, 2004, and 2005, or ninety-eight percent (98%) thereafter, of the number of tons of NO<sub>x</sub> emissions in the trading program budget apportioned to electric generating units under subsection (a)(1), the department shall adjust the total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units for the control period under subdivision (1) so that the total number of NO<sub>x</sub> allowances allocated equals ninety-five percent (95%) in 2003, 2004, and 2005, or ninety-eight percent (98%) thereafter, of the number of tons of NO<sub>x</sub> emissions in the trading program budget apportioned to electric generating units under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by ninety-five percent (95%) in 2003, 2004, and 2005, or ninety-eight percent (98%) thereafter, of the number of tons of NO<sub>x</sub> emissions in the trading program budget apportioned to electric generating units; and

(B) dividing by the total number of NO<sub>x</sub> allowances allocated under subdivision (1), and rounding to the nearest whole NO<sub>x</sub> allowance, as appropriate.

(3) The department shall allocate NO<sub>x</sub> allowances to each affected boiler in an amount equaling [0.XX] pound per million British thermal units multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO<sub>x</sub> allowance, as appropriate.

(4) If the initial total number of NO<sub>x</sub> allowances allocated to all affected boilers for a control period under subdivision (3) does not equal ninety-five percent (95%) in

2003, 2004, and 2005, or ninety-eight percent (98%) thereafter, of the number of tons of NO<sub>x</sub> emissions in the trading program budget apportioned to affected boilers, the department shall adjust the total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units for the control period under subdivision (3) so that the total number of NO<sub>x</sub> allowances allocated equals ninety-five percent (95%) in 2003, 2004, and 2005, or ninety-eight percent (98%) thereafter, of the number of tons of NO<sub>x</sub> emissions in the trading program budget apportioned to affected boilers. This adjustment shall be made by:

(A) multiplying each unit's allocation by ninety-five percent (95%) in 2003, 2004, and 2005, or ninety-eight percent (98%) thereafter, of the number of tons of NO<sub>x</sub> emissions in the trading program budget apportioned to affected boilers; and

(B) dividing by the total number of NO<sub>x</sub> allowances allocated under subdivision (3), and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(5) For NO<sub>x</sub> budget units that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subsection (c), the department shall allocate NO<sub>x</sub> allowances in accordance with the following procedures:

(A) The department shall establish one (1) allocation set-aside for each control period. Each allocation set-aside shall be allocated NO<sub>x</sub> allowances equal to five percent (5%) in 2003, 2004, and 2005, or two percent (2%) thereafter, of the tons of NO<sub>x</sub> emissions in the trading program budget under subsection (a), rounded to the nearest whole NO<sub>x</sub> allowance, as appropriate.

(B) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit under this subdivision may submit to the department a request, in writing or in a format specified by the department, to be allocated NO<sub>x</sub> allowances for no more than five (5) consecutive control periods under subsection (b), starting with the control period during which the NO<sub>x</sub> budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it shall receive an allocation under subdivision (1) or (3). The NO<sub>x</sub> allowance allocation request must be submitted prior to May 1 of the first control period for which the NO<sub>x</sub> allowance allocation is requested and after the date on which the department issues a permit to construct the NO<sub>x</sub> budget unit.

(C) In a NO<sub>x</sub> allowance allocation request under this subdivision, the NO<sub>x</sub> authorized account representative may request for a control period, NO<sub>x</sub> allowances in an amount that does not exceed the following:

(i) For an electricity generating unit:

(AA) [0.XX] pound per million British thermal units;

(BB) multiplied by the NO<sub>x</sub> budget unit's maximum design heat input, in million British thermal units per hour; and

(CC) multiplied by the number of hours remaining in the control period starting with the first day in the control period

- on which the unit operated or is projected to operate.
- (ii) For an affected boiler:
- (AA) [0.XX] pound per million British thermal units;
  - (BB) multiplied by the NO<sub>x</sub> budget unit's maximum design heat input, in million British thermal units per hour; and
  - (CC) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(D) The department shall review, and allocate NO<sub>x</sub> allowances pursuant to, each NO<sub>x</sub> allowance allocation request in the order that the request is received by the department as follows:

- (i) Upon receipt of the NO<sub>x</sub> allowance allocation request, the department shall determine whether, and shall make any necessary adjustments to the request to ensure that, for electricity generating units, the control period and the number of allowances specified are consistent with the requirements of clause (C)(1) and, for affected boilers, the control period and the number of allowances specified are consistent with the requirements of clause (C)(2).
- (ii) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances greater than or equal to the number requested, as adjusted under item (i), the department shall allocate the amount of the NO<sub>x</sub> allowances requested, as adjusted under item (i), to the NO<sub>x</sub> budget unit.
- (iii) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances less than the number requested, as adjusted under item (i), the department shall deny in part the request and allocate only the remaining number of NO<sub>x</sub> allowances in the allocation set-aside to the NO<sub>x</sub> budget unit.
- (iv) Once an allocation set-aside for a control period has been depleted of all NO<sub>x</sub> allowances, the department shall deny, and shall not allocate any NO<sub>x</sub> allowances pursuant to, any NO<sub>x</sub> allowance allocation request under which NO<sub>x</sub> allowances have not already been allocated for the control period.

Within sixty (60) days of receipt of a NO<sub>x</sub> allowance allocation request, the department shall take appropriate action under clause (D) and notify the NO<sub>x</sub> authorized account representative that submitted the request and the U.S. EPA of the number of NO<sub>x</sub> allowances, if any, allocated for the control period to the NO<sub>x</sub> budget unit.

(e) For a NO<sub>x</sub> budget unit that is allocated NO<sub>x</sub> allowances under subsection (d)(5) for a control period, the U.S. EPA shall deduct NO<sub>x</sub> allowances under section 10(k)(1) or section 10(k)(8) of this rule to account for the actual utilization of the unit during the control period. The U.S. EPA shall calculate the number of NO<sub>x</sub> allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the

nearest whole NO<sub>x</sub> allowance, as appropriate, provided that the number of NO<sub>x</sub> allowances to be deducted shall be zero (0) if the number calculated is less than zero (0):

(1) NO<sub>x</sub> allowances deducted for actual utilization for electricity generating units = (Unit's NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period utilization × [0.XX] pound per million British thermal units).

(2) NO<sub>x</sub> allowances deducted for actual utilization for affected boilers = (Unit's NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period utilization × [0.XX] pound per million British thermal units).

where:

“Unit's NO<sub>x</sub> allowances allocated for control period” is the number of NO<sub>x</sub> allowances allocated to the unit for the control period under subdivision (5); and

“Unit's actual control period utilization” is the utilization, in million British thermal units, as defined in section 2 of this rule, of the unit during the control period.

(f) After making the deductions for compliance under section 10(k)(1) or 10(k)(8) of this rule for a control period, the U.S. EPA shall notify the department whether any NO<sub>x</sub> allowances remain in the allocation set-aside for the control period. The department shall allocate any remaining NO<sub>x</sub> allowances to the NO<sub>x</sub> budget units using the following formula and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate. A unit's share of NO<sub>x</sub> allowances remaining in allocation set-aside = Total NO<sub>x</sub> allowances remaining in allocation set-aside × (Unit's NO<sub>x</sub> allowance allocation ÷ trading program budget excluding allocation set-aside) where:

(1) Total NO<sub>x</sub> allowances remaining in allocation set-aside is the total number of NO<sub>x</sub> allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies.

(2) Unit's NO<sub>x</sub> allowance allocation is the number of NO<sub>x</sub> allowances allocated under subsection (d)(1) or (d)(2) to the unit for the control period to which the allocation set-aside applies.

(3) The trading program budget excluding allocation set-aside is the trading program budget under subsection (a) for the control period to which the allocation set-aside applies multiplied by ninety-five percent (95%) if the control period is in 2003, 2004, or 2005 or ninety-eight percent (98%) if the control period is in any year thereafter, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

\*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-9*)

**326 IAC 10-3-10 NO<sub>x</sub> allowance tracking system**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*This section establishes the procedures to be used by the U.S. EPA to track NO<sub>x</sub> allowance allocations, deductions, and transfers. The section includes procedures for establishing compliance, overdraft, and general accounts. The procedures for deductions from compliance and overdraft accounts are included, as well as requirements concerning excess emissions.*

**Sec. 10. (a) The U.S. EPA shall establish compliance and overdraft accounts consistent with subsection (c). NO<sub>x</sub> allowances shall be recorded in the compliance accounts or overdraft accounts according to the following:**

- (1) Allocations of NO<sub>x</sub> allowances pursuant to section 9 or 13(j) of this rule.**
- (2) Deductions or transfers of NO<sub>x</sub> allowances pursuant one (1) of the following:**
  - (A) Sections 8(d), 8(e), 11, or 13 of this rule.**
  - (B) Subsections (j), (k), or (m).**

**(b) The U.S. EPA shall establish, upon request, a general account for any person consistent with subsection (d). Transfers of allowances pursuant to section 11 of this rule shall be recorded in the general account in accordance with this section.**

**(c) Upon receipt of a complete account certificate of representation under section 6(h) of this rule, the U.S. EPA shall establish:**

- (1) A compliance account for each NO<sub>x</sub> budget unit for which the account certificate of representation was submitted.**
- (2) An overdraft account for each source for which the account certificate of representation was submitted and that has two (2) or more NO<sub>x</sub> budget units.**

**(d) Any person may apply to open a general account for the purpose of holding and transferring allowances. The establishment of a general account shall be subject to the following:**

- (1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:**
  - (A) The following information concerning the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative:**
    - (i) Name.**
    - (ii) Mailing address.**
    - (iii) E-mail address, if any.**
    - (iv) Telephone number.**
    - (v) Facsimile transmission number, if any.**
  - (B) At the option of the NO<sub>x</sub> authorized account representative, organization name and type of organization.**
  - (C) A list of all persons subject to a binding agreement for the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account**

representative to represent their ownership interest with respect to the allowances held in the general account.

(D) The following certification statement by the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative: “I certify that I was selected as the NO<sub>x</sub> authorized account representative or the NO<sub>x</sub> alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO<sub>x</sub> budget trading program on behalf of persons and that each person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account.”

(E) The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed.

(F) Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(2) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

(A) The U.S. EPA shall establish a general account for the person or persons for whom the application is submitted.

(B) The NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO<sub>x</sub> allowances held in the general account in all matters pertaining to the NO<sub>x</sub> budget trading program, notwithstanding any agreement between the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative and the person. Any person having an ownership interest with respect to NO<sub>x</sub> allowances shall be bound by any order or decision issued to the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative by the U.S. EPA or a court regarding the general account.

(C) Each submission concerning the general account shall be submitted, signed, and certified by the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for the persons having an ownership interest with respect to NO<sub>x</sub> allowances held in the general account. Each submission shall include the following certification statement by the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative any: “I am authorized to make this submission on behalf of the persons having an ownership interest with

respect to the NO<sub>x</sub> allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(D) The U.S. EPA shall accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (C).

(3) The following shall apply to the designation of a NO<sub>x</sub> authorized account representative, alternate NO<sub>x</sub> authorized account representative, or persons having an ownership interest with respect to NO<sub>x</sub> allowances in the general account:

(A) An application for a general account may designate the following:

(i) One (1) and only one (1) NO<sub>x</sub> authorized account representative.

(ii) One (1) and only one (1) alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative.

The agreement by which the alternate NO<sub>x</sub> authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative.

(B) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), any representation, action, inaction, or submission by any alternate NO<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO<sub>x</sub> authorized account representative.

(C) The NO<sub>x</sub> authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous NO<sub>x</sub> authorized account representative prior to the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new NO<sub>x</sub> authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(D) The alternate NO<sub>x</sub> authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous alternate NO<sub>x</sub> authorized account representative prior to the time and date when the U.S. EPA receives the



superseding application for a general account shall be binding on the new alternate NO<sub>x</sub> authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(E) In the event a new person having an ownership interest with respect to NO<sub>x</sub> allowances in the general account is not included in the list of persons having an ownership interest with respect to the NO<sub>x</sub> allowances in the account certificate of representation, the new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the U.S. EPA, as if the new person were included in the list.

(F) Within thirty (30) days following any change in the persons having an ownership interest with respect to NO<sub>x</sub> allowances in the general account, including the addition of persons, the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO<sub>x</sub> allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA shall rely on the application unless and until a superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivision (4), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative or the finality of any decision or order by the U.S. EPA under the NO<sub>x</sub> budget trading program.

(6) The U.S. EPA shall not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for a general account, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.

(e) The U.S. EPA shall assign a unique identifying number to each account established under subsection (c) or (d).

(f) Following the establishment of a NO<sub>x</sub> allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO<sub>x</sub> allowances in the account, shall be made only by the NO<sub>x</sub> authorized account representative for the account. The U.S. EPA shall assign a unique identifying number to each NO<sub>x</sub> authorized account representative.

(g) The U.S. EPA shall record the NO<sub>x</sub> allowances for 2003 in the NO<sub>x</sub> budget units' compliance accounts and the allocation set-asides, as allocated under section 9 of this rule. The U.S. EPA shall also record the NO<sub>x</sub> allowances allocated under section 13(j)(1) of this rule for each NO<sub>x</sub> budget opt-in source in its compliance account.

(h) Each year, after the U.S. EPA has made all deductions from a NO<sub>x</sub> budget unit's compliance account and the overdraft account pursuant to subsection (k), the U.S. EPA shall record NO<sub>x</sub> allowances, as allocated to the unit under section 9 or 13(j)(2) of this rule, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the U.S. EPA shall also record NO<sub>x</sub> allowances, as allocated under section 9 of this rule, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(i) When allocating NO<sub>x</sub> allowances to and recording them in an account, the U.S. EPA shall assign each NO<sub>x</sub> allowance a unique identification number that shall include digits identifying the year for which the NO<sub>x</sub> allowance is allocated.

(j) The NO<sub>x</sub> allowances are available to be deducted for compliance with a unit's NO<sub>x</sub> budget emissions limitation for a control period in a given year only if the NO<sub>x</sub> allowances:

- (1) were allocated for a control period in a prior year or the same year; and
- (2) are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO<sub>x</sub> allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recordation under section 11(a) of this rule by the NO<sub>x</sub> allowance transfer deadline for that control period.

(k) The following shall apply to deductions for purposes of compliance with a unit's allocations:

(1) Following the recordation, in accordance with section 11(b) or 11(c) of this rule, of NO<sub>x</sub> allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO<sub>x</sub> allowance transfer deadline for a control period, the U.S. EPA shall deduct NO<sub>x</sub> allowances available under subsection (j) to cover the unit's NO<sub>x</sub> emissions, as determined in accordance with 40 CFR 75, Subpart H\*, or to account for actual utilization under section 9(e) of this rule, for the control period:

- (A) from the compliance account; and
- (B) only if no more NO<sub>x</sub> allowances available under subsection (j) remain in the compliance account, from the overdraft account.

In deducting allowances for units at the source from the overdraft account, the U.S. EPA shall begin with the unit having the compliance account with the lowest NO<sub>x</sub> allowance tracking system account number and end with the unit having the compliance account with the highest NO<sub>x</sub> allowance tracking system account

number, with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters.

(2) The U.S. EPA shall deduct NO<sub>x</sub> allowances under subdivision (1) until:

(A) the number of NO<sub>x</sub> allowances deducted for the control period equals the number of tons of NO<sub>x</sub> emissions, determined in accordance with 40 CFR 75, Subpart H\*, from the unit for the control period for which compliance is being determined, plus the number of NO<sub>x</sub> allowances required for deduction to account for actual utilization under section 9(e) of this rule for the control period; or

(B) no more NO<sub>x</sub> allowances available under subsection (j) remain in the respective account.

(3) The NO<sub>x</sub> authorized account representative for each compliance account may identify by serial number the NO<sub>x</sub> allowances to be deducted from the unit's compliance account under this section. The identification shall be made in the compliance certification report submitted in accordance with sections 8(a) through 8(c) of this rule.

(4) The U.S. EPA shall deduct NO<sub>x</sub> allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO<sub>x</sub> allowances by serial number under subdivision (3), or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Those NO<sub>x</sub> allowances that were allocated for the control period to the unit under section 9 or 13 of this rule.

(B) Those NO<sub>x</sub> allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.

(C) Those NO<sub>x</sub> allowances that were allocated for a prior control period to the unit under section 9 or 13 of this rule.

(D) Those NO<sub>x</sub> allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.

(5) After making the deductions for compliance under subsections (k)(1) and (k)(2), the U.S. EPA shall deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO<sub>x</sub> allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.

(6) If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the U.S. EPA shall deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(7) Any allowance deduction required under subdivision (5) shall not affect the liability of the owners and operators of the NO<sub>x</sub> budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same

violation, as ordered under the CAA or applicable state law. The following guidelines shall be followed in assessing fines, penalties or other obligations:

(A) For purposes of determining the number of days of violation, if a NO<sub>x</sub> budget unit has excess emissions for a control period, each day in the control period, one hundred fifty-three (153) days, constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(B) Each ton of excess emissions is a separate violation.

(8) In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with 40 CFR 75, Subpart H\*, the following shall apply:

(A) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. The identification shall be made in the compliance certification report submitted in accordance with sections 8(a) through 8(c) of this rule.

(B) Notwithstanding clause (2)(A), the U.S. EPA shall deduct NO<sub>x</sub> allowances for each unit, in accordance with subdivision (1), until the number of NO<sub>x</sub> allowances deducted equals either of the following:

(i) The unit's identified percentage of the number of tons of NO<sub>x</sub> emissions, as determined in accordance with 40 CFR 75, Subpart H\*, from the common stack for the control period for which compliance is being determined.

(ii) If no percentage is identified, an equal percentage for each unit, plus the number of allowances required for deduction to account for actual utilization under section 9(e) of this rule for the control period.

(9) The U.S. EPA shall record in the appropriate compliance account or overdraft account all deductions from an account pursuant to this section.

(l) The U.S. EPA may correct any error in any NO<sub>x</sub> allowance tracking system account. Within ten (10) business days of making the correction, the U.S. EPA shall notify the NO<sub>x</sub> authorized account representative for the account.

(m) The NO<sub>x</sub> authorized account representative of a general account may instruct the U.S. EPA to close the account by submitting a statement requesting deletion of the account from the NO<sub>x</sub> allowance tracking system and by correctly submitting for recordation under section 11(a) of this rule, an allowance transfer of all NO<sub>x</sub> allowances in the account to one (1) or more other NO<sub>x</sub> allowance tracking system accounts.

(n) If a general account shows no activity for a period of one (1) year or more and does not contain any NO<sub>x</sub> allowances, the U.S. EPA may notify the NO<sub>x</sub> authorized account representative for the account that the account shall be closed and deleted from the NO<sub>x</sub> allowance tracking system following twenty (20) business days after the notice is sent. The

account shall be closed after the twenty (20) day period unless before the end of the twenty (20) day period the U.S. EPA receives a correctly submitted transfer of NO<sub>x</sub> allowances into the account under section 11(a) or a statement submitted by the NO<sub>x</sub> authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed.

**\*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-3-10)**

**326 IAC 10-3-11 NO<sub>x</sub> allowance transfers**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*This section establishes the procedures to be used by account holders to transfer NO<sub>x</sub> allowances between account holders.*

**Sec. 11. (a) The NO<sub>x</sub> authorized account representatives seeking recordation of a NO<sub>x</sub> allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the NO<sub>x</sub> allowance transfer shall include the following elements in a format specified by the U.S. EPA:**

- (1) The numbers identifying both the transferor and transferee accounts.**
- (2) A specification by serial number of each NO<sub>x</sub> allowance to be transferred.**
- (3) The printed name and signature of the NO<sub>x</sub> authorized account representative of the transferor account and the date signed.**

**(b) Within five (5) business days of receiving a NO<sub>x</sub> allowance transfer, the U.S. EPA shall record a NO<sub>x</sub> allowance transfer by moving each NO<sub>x</sub> allowance from the transferor account to the transferee account as specified by the request, provided that:**

- (1) The transfer is correctly submitted under subsection (a).**
- (2) The transferor account includes each NO<sub>x</sub> allowance identified by serial number in the transfer.**
- (3) The transfer meets all other requirements of this section.**

**A NO<sub>x</sub> allowance transfer that is submitted for recordation following the NO<sub>x</sub> allowance transfer deadline and that includes any NO<sub>x</sub> allowances allocated for a control period prior to, or the same as, the control period to which the NO<sub>x</sub> allowance transfer deadline applies shall not be recorded until after completion of the process of recordation of NO<sub>x</sub> allowance allocations in section 10(h) of this rule.**

**(c) Where a NO<sub>x</sub> allowance transfer submitted for recordation fails to meet the requirements of subsection (b), the U.S. EPA shall not record the transfer.**

(d) The following notification requirements shall apply to NO<sub>x</sub> allowance transfers:  
(1) Within five (5) business days of recordation of a NO<sub>x</sub> allowance transfer under subsection (b), the U.S. EPA shall notify each party to the transfer. Notice shall be given to the NO<sub>x</sub> authorized account representatives of both the transferor and transferee accounts.

(2) Within ten (10) business days of receipt of a NO<sub>x</sub> allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA shall notify the NO<sub>x</sub> authorized account representatives of both the transferor and transferee accounts subject to the transfer of the following:

(A) A decision not to record the transfer.

(B) The reasons for non-recordation.

(e) Nothing in this section shall preclude the submission of a NO<sub>x</sub> allowance transfer for recordation following notification of non-recordation. (*Air Pollution Control Board; 326 IAC 10-3-11*)

**326 IAC 10-3-12 NO<sub>x</sub> monitoring and reporting requirements**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

*This section establishes the requirements for monitoring units in the trading program to demonstrate compliance and the reporting and record keeping requirements for compliance data. Elements include compliance dates for required monitoring system installations, prohibited activities, certification and recertification requirements, alternatives for low mass emission units, reporting and record keeping requirements, and provisions for requesting alternative methodologies.*

**Sec. 12. (a)** The owners and operators, and to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit, shall comply with the monitoring and reporting requirements as provided in this rule and in 40 CFR 75, Subpart H\*. For purposes of complying with the requirements, the definitions in section 2 of this rule and 40 CFR 72.2\* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 75\* shall be replaced by the terms NO<sub>x</sub> budget unit, NO<sub>x</sub> authorized account representative, and continuous emission monitoring system (CEMS), respectively, as defined in section 2 of this rule.

**(b)** The owner or operator of each NO<sub>x</sub> budget unit and a unit for which an application for a NO<sub>x</sub> Budget opt-in permit is submitted and not denied or withdrawn, as provided in section 13 of this rule must meet the following requirements:

(1) Install all monitoring systems required under this subpart for monitoring NO<sub>x</sub> mass. This includes all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, heat input, and flow, in accordance with 40 CFR 75.72\* and 40 CFR 75.76\*.

(2) Install all monitoring systems for monitoring heat input, if required under

subsection (q) for developing NO<sub>x</sub> allowance allocations.

(3) Successfully complete all certification tests required under subsections (e) through (k) and meet all other provisions of this section and 40 CFR 75\* applicable to the monitoring systems under subdivisions (1) and (2).

(4) Record and report data from the monitoring systems under subdivisions (1) and (2).

(c) The owner or operator must meet the requirements of subsections (b)(1) through (3) on or before the following dates and must record and report data on and after the following dates:

(1) NO<sub>x</sub> budget units for which the owner or operator intends to apply for early reduction credits under section 14(c) of this rule must comply with the requirements of this section by May 1, 2000.

(2) Except for NO<sub>x</sub> budget units under subdivision (1), NO<sub>x</sub> budget units that commence operation before January 1, 2002, must comply with the requirements of this section by May 1, 2002.

(3) NO<sub>x</sub> budget units that commence operation on or after January 1, 2002 and that report on an annual basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:

(A) May 1, 2002.

(B) The earlier of:

(i) one hundred eighty (180) days after the date on which the unit commences operation; or

(ii) for units under section 1(a)(1) of this rule, ninety (90) days after the date that the unit commences commercial operation.

(4) NO<sub>x</sub> budget units that commence operation on or after January 1, 2002 and that report on a control season basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:

(A) The earlier of:

(i) one hundred eighty (180) days after the date on which the unit commences operation; or

(ii) for units under section 1(a)(1) of this rule, ninety (90) days after the date on which the unit commences commercial operation.

(B) If the applicable deadline under clause (A) does not occur during a control period, May 1 immediately following the date determined in accordance with clause (A).

(5) For a NO<sub>x</sub> budget unit with a new stack or flue for which construction is completed after the applicable deadline under subdivision (1), (2), or (3) or section 13 of this rule, compliance by the later of the following dates:

(A) Ninety (90) days after the date that emissions first exit to the atmosphere through the new stack or flue.

(B) If the unit reports on a control season basis under subsection (o)(4) and the applicable deadline under clause (A) does not occur during the control period, May 1 immediately following the applicable deadline in clause (A).

**(6) For a unit for which an application for a NO<sub>x</sub> budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified under section 13 of this rule.**

**(d) The owner or operator of a NO<sub>x</sub> budget unit that misses the certification deadline under subsection (c)(1):**

- (1) is not eligible to apply for early reduction credits under section 14 of this rule; and**
- (2) becomes subject to the certification deadline under subsection (c)(2).**

**(e) The owner or operator of a NO<sub>x</sub> budget under subsection (c)(3) or (c)(4) must determine, record and report NO<sub>x</sub> mass, heat input, if required for purposes of allocations, and any other values required to determine NO<sub>x</sub> mass, for example NO<sub>x</sub> emission rate and heat input or NO<sub>x</sub> concentration and stack flow, using the provisions of 40 CFR 75.70(g)\*, from the date and hour that the unit starts operating until all required certification tests are successfully completed.**

**(f) The following shall apply to any monitoring system, alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:**

- (1) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with subsection (p).**
- (2) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* shall operate the unit so as to discharge, or allow to be discharged, NO<sub>x</sub> emissions to the atmosphere without accounting for all the emissions in accordance with the applicable provisions of this rule and 40 CFR 75\* except as provided for in 40 CFR 75.74\*.**
- (3) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* shall disrupt the CEMS, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO<sub>x</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule and 40 CFR 75\* except as provided for in 40 CFR 75.74\*.**
- (4) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emission monitoring system under this section, except under one (1) of the following circumstances:**
  - (A) During the period that the unit is covered by a retired unit exemption under section 3 of this rule.**
  - (B) The owner or operator is monitoring emissions from the unit with**



another certified monitoring system approved, in accordance with the applicable provisions of this rule and 40 CFR 75\*, by the department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system.

(C) The NO<sub>x</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subsection (h)(2).

(g) The owner or operator of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75\*, except that:

(1) If, prior to January 1, 1998, the U.S. EPA approved a petition under 40 CFR 75.17(a) or 40 CFR 75.17(b)\* for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66\* for an alternative to a requirement in 40 CFR 75.17\*, the NO<sub>x</sub> authorized account representative shall resubmit the petition to the U.S. EPA under subsection (p)(1) to determine if the approval applies under the NO<sub>x</sub> budget trading program.

(2) For any additional CEMS required under the common stack provisions in 40 CFR 75.72\*, or for any NO<sub>x</sub> concentration CEMS used under the provisions of 40 CFR 75.71(a)(2)\*, the owner or operator shall meet the requirements of subsection (h).

(h) The owner or operator of a NO<sub>x</sub> budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19\* shall also meet the requirements of subsection (i) and the owner or operator of a unit that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E\* shall also meet the requirements of subsection (j). The owner or operator of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72\*, or that uses a NO<sub>x</sub> concentration CEMS under 40 CFR 75.71(a)(2)\* also shall comply with the following initial certification and recertification procedures:

(1) The owner or operator shall ensure that each monitoring system required by 40 CFR 75, Subpart H\*, that includes the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20\*. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subsection (c). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this section in a location where no monitoring system was previously installed, initial certification according to 40 CFR 75.20\* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS that the U.S. EPA or the department determines significantly affects the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions

or heat input or to meet the requirements of 40 CFR 75.21\* or 40 CFR 75, Appendix B\*, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b)\*. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the U.S. EPA or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b)\*. Examples of changes that require recertification include replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) Requirements for the certification approval process for initial certifications and recertification are as follows:

(A) The NO<sub>x</sub> authorized account representative shall submit to the appropriate U.S. EPA regional office and the department a written notice of the dates of certification in accordance with subsection (n).

(B) The NO<sub>x</sub> authorized account representative shall submit to the department a certification application for each CEMS required under 40 CFR 75, Subpart H\*. A complete certification application shall include the information specified in 40 CFR 75, Subpart H\*.

(C) Except for units using the low mass emission excepted methodology under 40 CFR 75.19\*, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3)\*. A provisionally certified monitor may be used under the NO<sub>x</sub> budget trading program for a period of time not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the CEMS or associated component thereof under clause (B). Data measured and recorded by the provisionally certified CEMS or associated component thereof, in accordance with the requirements of 40 CFR 75\*, shall be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue a notice within the one hundred twenty (120) day period, each CEMS that meets the applicable performance requirements of 40 CFR 75\* and is included in the certification application shall be deemed certified for use under the NO<sub>x</sub> budget trading program. The issuance of notices shall be as follows:

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75\*, then the department shall issue a written notice of approval of the certification application within one hundred twenty

**(120) days of receipt.**

**(ii) A certification application shall be considered complete when all of the applicable information required to be submitted under clause (B) has been received by the department. If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the NO<sub>x</sub> authorized account representative must submit the additional information required to complete the certification application. If the NO<sub>x</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under item (iii).**

**(iii) If the certification application shows that any CEMS or associated component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under item (ii) has been met, the department shall issue a written notice of disapproval of the certification application. Upon issuance of the notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified CEMS or associated component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in clause (E) for each CEMS or associated component thereof which is disapproved for initial certification.**

**(iv) The department may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (m).**

**(i) If the department issues a notice of disapproval of a certification application under subsection (h)(3)(D)(iii) or a notice of disapproval of certification status under subsection (h)(3)(D)(iv), then the following shall apply:**

**(1) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i)\* and the following:**

**(A) For units monitoring or intending to monitor for NO<sub>x</sub> emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19\*;**

**(i) the maximum potential NO<sub>x</sub> emission rate; and**

**(ii) the maximum potential hourly heat input of the unit.**

**(B) For units monitoring or intending to monitor for NO<sub>x</sub> mass emissions using a NO<sub>x</sub> pollutant concentration monitor and a flow monitor;**

**(i) the maximum potential concentration of NO<sub>x</sub>; and**

**(ii) the maximum potential flow rate of the unit under 40 CFR**

**75, Appendix A, Section 2.1\*.**

**(2) The NO<sub>x</sub> authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subsections (h)(3)(A) and (h)(3)(C).**

**(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.**

**(j) The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19\* shall meet the applicable general operating requirements of 40 CFR 75.10\*, the applicable requirements of 40 CFR 75.19\*, and the applicable certification requirements of subsections (e) through (i) and (k), except that the excepted methodology shall be deemed provisionally certified for use under the NO<sub>x</sub> budget trading program, as of the following dates:**

**(1) For units that are reporting on an annual basis under subsection (o)(4) that commenced operation:**

**(A) before its compliance deadline under subsection (c), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for department review; or**

**(B) after its compliance deadline under subsection (c), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for department review.**

**(2) For units that are reporting on a control period basis under subsection (o)(4)(B)(ii):**

**(A) that commenced operation before its compliance deadline under subsection (c) where the certification application is submitted:**

**(i) before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for the department's review;**

**(ii) after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for the department's review;**

**(B) that commences operation after its compliance deadline under subsection (c), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the department's review; or**

**(C) that has not operated after its compliance deadline under subsection (c), where the certification application is submitted after May 1, but before October 1, from the date of submission of a certification application for**

**approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for the department's review.**

**(k) The NO<sub>x</sub> authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E\* shall apply to the department for certification prior to use of the system under the NO<sub>x</sub> trading program. The NO<sub>x</sub> authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subsection (h). The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subsection (h)(3) and 40 CFR 75.20(f)\*.**

**(l) Whenever any monitoring system fails to meet the quality assurance requirements of 40 CFR 75, Appendix B\*, data shall be substituted using the applicable procedures in 40 CFR 75, Subpart D\*; 40 CFR 75, Appendix D\*; or 40 CFR 75, Appendix E\*.**

**(m) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or associated component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (e) through (k) or the applicable provisions of 40 CFR 75\*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department shall issue a notice of disapproval of the certification status of the system or associated component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the U.S. EPA or the department. By issuing the notice of disapproval, the department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in subsections (e) through (k) for each disapproved system.**

**(n) The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit shall submit written notice to the department and the U.S. EPA in accordance with 40 CFR 75.61\*, except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the department.**

**(o) The NO<sub>x</sub> authorized account representative shall comply with all record keeping and reporting requirements in this subsection and with the requirements of section 6(e) of this rule as follows:**

**(1) If the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit subject to an**

acid rain emission limitation who signed and certified any submission that is made under 40 CFR 75, Subpart F\* or 40 CFR 75, Subpart G\* and that includes data and information required under this section or 40 CFR 75, Subpart H\* is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR 72\*, the submission must also be signed by the designated representative or the alternative designated representative.

(2) The owner or operator of a NO<sub>x</sub> budget unit shall comply with the following monitoring plan requirements:

(A) The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62\*, except that the monitoring plan shall also include all of the information required by 40 CFR 75, Subpart H\*.

(B) The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62\*, except that the monitoring plan is only required to include the information required by 40 CFR 75, Subpart H\*.

(3) The NO<sub>x</sub> authorized account representative shall submit an application to the department within forty-five (45) days after completing all initial certification or recertification tests required under subsections (e) through (k) including the information required under 40 CFR 75, Subpart H\*.

(4) The NO<sub>x</sub> authorized account representative shall submit quarterly reports as follows:

(A) If a unit is subject to an acid rain emission limitation or if the owner or operator of the NO<sub>x</sub> budget unit chooses to meet the annual reporting requirements of this section, the NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) the units that elect to comply with the early reduction credit provisions under section 14 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection

(h)(3)(C). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(ii) the units commencing operation prior to May 1, 2002, that are not required to certify monitors by May 1, 2000 under subsection (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or

(iii) for a unit that commences operation after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

**(B) If a NO<sub>x</sub> budget unit is not subject to an acid rain emission limitation, then the NO<sub>x</sub> authorized account representative shall do either the following:**

**(i) Meet all of the requirements of 40 CFR 75\* related to monitoring and reporting NO<sub>x</sub> mass emissions during the entire year and meet the reporting deadlines specified in clause (A)(i).**

**(ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3)\* through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b)\*. The NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:**

**(AA) the units that elect to comply with the early reduction credit provisions under section 14 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;**

**(BB) the units commencing operation prior to May 1, 2002, that are not required to certify monitors by May 1, 2000 under section (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002;**

**(CC) for units that commence operation after May 1, 2002, during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation;**

**(DD) for units that commence operation after May 1, 2002, and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.**

(EE) for units that commence operation after May 1, 2002, and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(C) The NO<sub>x</sub> authorized account representative shall submit each quarterly report to the U.S. EPA within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75, Subpart H\* and 40 CFR 75.64\* and the following:

(i) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR 75, Subpart H\* for each NO<sub>x</sub> budget unit, or group of units using a common stack, as well as information required in 40 CFR 75, Subpart G\*.

(ii) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in 40 CFR 75, Subpart H\* for each NO<sub>x</sub> budget unit, or group of units using a common stack.

(D) The NO<sub>x</sub> authorized account representative shall submit to the department and the U.S. EPA a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(i) the monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75\*, including the quality assurance procedures and specifications; and

(ii) for a unit with add-on NO<sub>x</sub> emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1)\*, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO<sub>x</sub> emissions; and

(iii) for a unit that is reporting on a control period basis under subsection (o)(4), the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under 40 CFR 75, Subpart D\* are calculated using only values from a control period and do not systematically underestimate NO<sub>x</sub> emissions.



**(p) A petition requesting approval of alternatives to any requirement of this section may be made as follows:**

**(1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66\* to the U.S. EPA requesting approval to apply an alternative to any requirement of this section.**

**(A) Application for an alternative to any requirement of this section is in accordance with this subsection only to the extent that the petition is approved by the U.S. EPA, in consultation with the department.**

**(B) Notwithstanding subdivision (1), if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72\*, the petition is governed by subdivision (2).**

**(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66\* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section.**

**(A) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66\* to the department and the U.S. EPA requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72\* or a NO<sub>x</sub> concentration CEMS used under 40 CFR 75.71(a)(2)\*.**

**(B) Application of an alternative to any requirement of this section is in accordance with this section only to the extent the petition under this subsection is approved by both the department and the U.S. EPA.**

**(q) The following shall apply to the monitoring and reporting of NO<sub>x</sub> mass emissions:**

**(1) The owner or operator of a unit that elects to monitor and report NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75\* for any source that has source allocations based upon heat input.**

**(2) The owner or operator of a unit that monitors and reports NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75\* for any source that is applying for early reduction credits under section 10(n) of this rule.**

**\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-12*)**

**326 IAC 10-3-13 Individual opt-ins**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*This section establishes the procedures and requirements for a source that wants to opt into the trading program, but does not have a NO<sub>x</sub> budget unit. The section includes application and permit requirements, allowance allocation procedures, provisions to create opt-in accounts, and procedures to allow an opt-in unit to withdraw from the trading program.*

**Sec. 13. (a) A unit may qualify to become a NO<sub>x</sub> budget opt-in source under this section, if the unit meets the following requirements:**

- (1) Is not a NO<sub>x</sub> budget unit under section 1 of this rule.**
- (2) Has all of its emissions vented to a stack.**
- (3) Is currently operating.**

**A unit that is a NO<sub>x</sub> budget unit, is covered by a retired unit exemption under section 3 of this rule, or is not operating is not eligible to become a NO<sub>x</sub> budget opt-in source.**

**(b) Except otherwise as provided in this rule, a NO<sub>x</sub> budget opt-in source shall be treated as a NO<sub>x</sub> budget unit for purposes of applying sections 1 through 12 of this rule.**

**(c) A unit for which an application for a NO<sub>x</sub> budget opt-in permit is submitted and not denied or withdrawn, or a NO<sub>x</sub> budget opt-in source, located at the same source as one (1) or more NO<sub>x</sub> budget units, shall have the same NO<sub>x</sub> authorized account representative as the NO<sub>x</sub> budget units.**

**(d) In order to apply for an initial NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> authorized account representative of a unit qualified under subsection (a) may submit an application to the department at any time, except as provided under subsection (g), that includes the following:**

- (1) A complete NO<sub>x</sub> budget permit application under section 7(c) of this rule.**
- (2) A monitoring plan submitted in accordance with section 12 of this rule.**
- (3) A complete account certificate of representation under section 6(h) of this rule, if no NO<sub>x</sub> authorized account representative has been previously designated for the unit.**

**The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in source shall submit a complete NO<sub>x</sub> budget permit application under section 7(c) of this rule to renew the NO<sub>x</sub> budget opt-in permit in accordance with section 7(b)(1)(C) and 7(b)(2)(C) of this rule and, if applicable, an updated monitoring plan in accordance with section 12 of this rule.**

**(e) The department shall issue or deny a NO<sub>x</sub> budget opt-in permit for a unit for which an initial application for a NO<sub>x</sub> budget opt-in permit under subsection (d) is submitted, in accordance with section 7(a) of this rule and the following:**

- (1) The department shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO<sub>x</sub> budget opt-in**

permit under subsection (d). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO<sub>x</sub> emissions rate and heat input of the unit are monitored and reported in accordance with section 12 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(2) If the department determines that the unit's monitoring plan is sufficient under subdivision (1) and after completion of monitoring system certification under section 12 of this rule, the NO<sub>x</sub> emissions rate and the heat input of the unit shall be monitored and reported in accordance with section 12 of this rule for one (1) full control period during which monitoring system availability is not less than ninety percent (90%) and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a NO<sub>x</sub> budget unit prior to issuance of a NO<sub>x</sub> budget opt-in permit covering the unit.

(3) Based on the information monitored and reported under subdivision (2), the unit's baseline heat rate shall be calculated as the unit's total heat input, in million British thermal units, for the control period and the unit's baseline NO<sub>x</sub> emissions rate shall be calculated as the unit's total NO<sub>x</sub> mass emissions, in pounds, for the control period divided by the unit's baseline heat rate.

(4) After calculating the baseline heat input and the baseline NO<sub>x</sub> emissions rate for the unit under subdivision (3), the department shall serve a draft NO<sub>x</sub> budget opt-in permit on the NO<sub>x</sub> authorized account representative of the unit.

(5) Within twenty (20) days after the issuance of the draft NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> authorized account representative of the unit must submit to the department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO<sub>x</sub> budget opt-in permit under subsection (d). The department shall treat the failure to make a timely submission as a withdrawal of the NO<sub>x</sub> budget opt-in permit application.

(6) If the NO<sub>x</sub> authorized account representative confirms the intention to opt in the unit under subdivision (5), the department shall issue the draft NO<sub>x</sub> budget opt-in permit in accordance with section 7(a) of this rule.

(7) Notwithstanding subdivisions (1) through (6), if at any time before issuance of a draft NO<sub>x</sub> budget opt-in permit for the unit, the department determines that the unit does not qualify as a NO<sub>x</sub> budget opt-in source under subsection (a), the department shall issue a draft denial of a NO<sub>x</sub> budget opt-in permit for the unit in accordance with section 7(a) of this rule.

(8) A NO<sub>x</sub> authorized account representative of a unit may withdraw its application for a NO<sub>x</sub> budget opt-in permit under subsection (d) at any time prior to the issuance of the final NO<sub>x</sub> budget opt-in permit. Once the application for a NO<sub>x</sub> budget opt-in permit is withdrawn, a NO<sub>x</sub> authorized account representative wanting to reapply must submit a new application for a NO<sub>x</sub> budget permit under subsection (d).

(9) The effective date of the initial NO<sub>x</sub> budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO<sub>x</sub> budget opt-in permit

by the department. The unit shall be a NO<sub>x</sub> budget opt-in source and a NO<sub>x</sub> budget unit as of the effective date of the initial NO<sub>x</sub> budget opt-in permit.

(f) The following shall apply to the content of a NO<sub>x</sub> budget opt-in permit:

(1) Each NO<sub>x</sub> budget opt-in permit, including any draft or proposed NO<sub>x</sub> budget opt-in permit, if applicable, shall contain all elements required for a complete NO<sub>x</sub> budget opt-in permit application under section 7(c) of this rule as approved or adjusted by the department.

(2) Each NO<sub>x</sub> budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 1 of this rule and, upon recordation by the U.S. EPA under sections 10, 11, and 13 of this rule, every allocation, transfer, or deduction of NO<sub>x</sub> allowances to or from the compliance accounts of each NO<sub>x</sub> budget opt-in source covered by the NO<sub>x</sub> budget opt-in permit or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in source is located.

(g) The following requirements must be satisfied in order to withdraw an opt-in unit from the NO<sub>x</sub> budget trading program:

(1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in source shall submit to the department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety (90) days prior to the requested effective date of withdrawal.

(2) Before a NO<sub>x</sub> budget opt-in source covered by a request under subdivision (1) may withdraw from the NO<sub>x</sub> budget trading program and the NO<sub>x</sub> budget opt-in permit may be terminated under subdivision (6), the following conditions must be met:

(A) For the control period immediately before the withdrawal is to be effective, the NO<sub>x</sub> authorized account representative must submit or must have submitted to the department an annual compliance certification report in accordance with section 8 of this rule.

(B) If the NO<sub>x</sub> budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the U.S. EPA shall deduct or have deducted from the NO<sub>x</sub> budget opt-in source's compliance account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in source is located, the full amount required under sections 10(k)(5) through 10(k)(7) of this rule for the control period.

(C) After the requirements for withdrawal under subdivisions (1) and (2) are met, the U.S. EPA shall deduct from the NO<sub>x</sub> budget opt-in source's compliance account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in source is located, NO<sub>x</sub> allowances equal in number to, and allocated for, the same or a prior control period as any NO<sub>x</sub> allowances allocated to that source under subsection (j) for any control period for which the withdrawal is to be effective. The U.S. EPA shall close the NO<sub>x</sub> budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners

and operators of the NO<sub>x</sub> budget opt-in source. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> budget opt-in source shall become the NO<sub>x</sub> authorized account representative for the general account.

(3) A NO<sub>x</sub> budget opt-in source that withdraws from the NO<sub>x</sub> budget trading program shall comply with all requirements under the NO<sub>x</sub> budget trading program concerning all years for which the NO<sub>x</sub> budget opt-in source was a NO<sub>x</sub> budget opt-in source, even if the requirements arise or must be complied with after the withdrawal takes effect.

(4) After the requirements for withdrawal under subdivisions (1) and (2) are met, including deduction of the full amount of NO<sub>x</sub> allowances required, the department shall issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget opt-in source of the acceptance of the withdrawal of the NO<sub>x</sub> budget opt-in source as of a specified effective date that is after the requirements have been met and that is prior to May 1 or after September 30.

(5) If the requirements for withdrawal under subdivisions (1) and (2) are not met, the department shall issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget opt-in source that the NO<sub>x</sub> budget opt-in source's request to withdraw is denied. If the NO<sub>x</sub> budget opt-in source's request to withdraw is denied, the NO<sub>x</sub> budget opt-in source shall remain subject to the requirements for a NO<sub>x</sub> budget opt-in source.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the NO<sub>x</sub> budget permit covering the NO<sub>x</sub> budget opt-in source to terminate the NO<sub>x</sub> budget opt-in permit as of the effective date specified under subdivision (1). A NO<sub>x</sub> budget opt-in source shall continue to be a NO<sub>x</sub> budget opt-in source until the effective date of the termination.

(7) If the department denies the NO<sub>x</sub> budget opt-in source's request to withdraw, the NO<sub>x</sub> authorized account representative may submit another request to withdraw in accordance with subdivisions (1) and (2).

Once a NO<sub>x</sub> budget opt-in source withdraws from the NO<sub>x</sub> budget trading program and its NO<sub>x</sub> budget opt-in permit is terminated under this section, the NO<sub>x</sub> authorized account representative may not submit another application for a NO<sub>x</sub> budget opt-in permit under subsection (d) for the unit prior to the date that is four (4) years after the date on which the terminated NO<sub>x</sub> budget opt-in permit became effective.

(h) When a NO<sub>x</sub> budget opt-in source becomes a NO<sub>x</sub> budget unit under section 1 of this rule, the NO<sub>x</sub> authorized account representative shall notify the department and the U.S. EPA in writing of the change in the NO<sub>x</sub> budget opt-in source's regulatory status, within thirty (30) days of the change. If there is a change in the regulatory status, the department and the U.S. EPA shall take the following actions concerning a NO<sub>x</sub> budget opt-in source:

(1) When the NO<sub>x</sub> budget opt-in source becomes a NO<sub>x</sub> budget unit under section 1 of this rule, the department shall revise the NO<sub>x</sub> budget opt-in source's NO<sub>x</sub> budget opt-in permit to meet the requirements of a NO<sub>x</sub> budget permit under sections 7(d)

and 7(e) of this rule as of an effective date that is the date on which the NO<sub>x</sub> budget opt-in source becomes a NO<sub>x</sub> budget unit under section 1 of this rule.

(2) The U.S. EPA shall deduct from the compliance account for the NO<sub>x</sub> budget unit under subdivision (1), or the overdraft account of the NO<sub>x</sub> budget source where the unit is located, NO<sub>x</sub> allowances equal in number to, and allocated for, the same or a prior control period as follows:

(A) Any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget unit, as a NO<sub>x</sub> budget opt-in source, under subsection (i) for any control period after the last control period during which the unit's NO<sub>x</sub> budget opt-in permit was effective.

(B) If the effective date of the NO<sub>x</sub> budget permit revision under subdivision (1) is during a control period, the NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget unit, as a NO<sub>x</sub> budget opt-in source, under subsection (i) for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the control period.

(3) The NO<sub>x</sub> authorized account representative shall ensure that the compliance account of the NO<sub>x</sub> budget unit under subdivision (1), or the overdraft account of the NO<sub>x</sub> budget source where the unit is located, includes the NO<sub>x</sub> allowances necessary for completion of the deduction under subdivision (2). If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the U.S. EPA shall deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(4) For every control period during which the NO<sub>x</sub> budget permit revised under subdivision (1) is effective, the following shall apply:

(A) The NO<sub>x</sub> budget unit under subdivision (1) shall be treated, solely for the purposes of NO<sub>x</sub> allowance allocations under sections 9(c) through 9(e) of this rule, as a unit that commenced operation on the effective date of the NO<sub>x</sub> budget permit revision under subdivision (1) and shall be allocated NO<sub>x</sub> allowances under sections 9(c) through 9(e) of this rule.

(B) Notwithstanding clause (A), if the effective date of the NO<sub>x</sub> budget permit revision under subdivision (1) is during a control period, the following number of NO<sub>x</sub> allowances shall be allocated to the NO<sub>x</sub> budget unit. The number of NO<sub>x</sub> allowances otherwise allocated to the NO<sub>x</sub> budget unit under sections 9(c) through 9(e) of this rule for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the control period.

(5) When the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in source does not renew its NO<sub>x</sub> budget opt-in permit under subsection (d), the U.S. EPA shall deduct from the NO<sub>x</sub> budget opt-in unit's compliance account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in source is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control

period as any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget opt-in source under subsection (i) for any control period after the last control period for which the NO<sub>x</sub> budget opt-in permit is effective. The NO<sub>x</sub> authorized account representative shall ensure that the NO<sub>x</sub> budget opt-in source's compliance account or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in source is located includes the NO<sub>x</sub> allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the U.S. EPA shall deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(6) After the deduction under subdivision (5) is completed, the U.S. EPA shall close the NO<sub>x</sub> budget opt-in source's compliance account. If any NO<sub>x</sub> allowances remain in the compliance account after completion of the deduction and any deduction under sections 10(j) and 10(k) of this rule, the U.S. EPA shall close the NO<sub>x</sub> budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to a new general account for the owners and operators of the NO<sub>x</sub> budget opt-in source. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> budget opt-in source shall become the NO<sub>x</sub> authorized account representative for the general account.

(i) The department shall allocate NO<sub>x</sub> allowances to a NO<sub>x</sub> budget opt-in sources as follows:

(1) By December 31 immediately before the first control period for which the NO<sub>x</sub> budget opt-in permit is effective, the department shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in source and submit to the U.S. EPA the allocation for the control period in accordance with subdivision (3).

(2) By no later than December 31, after the first control period for which the NO<sub>x</sub> budget opt-in permit is in effect, and December 31 of each year thereafter, the department shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in source, and submit to the U.S. EPA allocations for the next control period, in accordance with subdivision (3).

(3) For each control period for which the NO<sub>x</sub> budget opt-in source has an approved NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> budget opt-in source shall be allocated NO<sub>x</sub> allowances according to the following procedures:

(A) The heat input, in million British thermal units, used for calculating NO<sub>x</sub> allowance allocations shall be the lesser of the following:

(i) The NO<sub>x</sub> budget opt-in source's baseline heat input determined pursuant to subsection (e)(3).

(ii) The NO<sub>x</sub> budget opt-in source's heat input, as determined in accordance with section 12 of this rule, for the control period in the year prior to the year of the control period for which the NO<sub>x</sub> allocations are being calculated.

(B) The department shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in source in an amount equaling the heat input, in million British thermal units,

determined under clause (A) multiplied by the lesser of the following:

- (i) The NO<sub>x</sub> budget opt-in source's baseline NO<sub>x</sub> emissions rate, in pounds per million British thermal units, determined pursuant to subsection (e)(3).
- (ii) The most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the NO<sub>x</sub> budget opt-in source during the control period.

**\*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-3-13)**

**326 IAC 10-3-14 NO<sub>x</sub> allowance banking and early reduction credits**

**Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11**

**Affected: IC 13-15; IC 13-17**

*The section includes provisions for allowance banking, flow control procedures to reduce the possibility that excess banked emissions could allow for increased emissions, and procedures for creating early reduction credits.*

**Sec. 14. (a) NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:**

**(1) Any NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account, or a general account shall remain in the account unless and until the NO<sub>x</sub> allowance is deducted or transferred under:**

- (A) sections 8(d), 8(e), 10(j), 10(k), 11, or 13 of this rule; or**
- (B) subsection (b).**

**(2) The U.S. EPA shall designate, as a banked NO<sub>x</sub> allowance, any NO<sub>x</sub> allowance that remains in a compliance account, an overdraft account, or a general account after the U.S. EPA has made all deductions for a given control period from the compliance account or overdraft account pursuant to sections 10(j) and 10(k) of this rule.**

**(b) Each year starting in 2004, after the U.S. EPA has completed the designation of banked NO<sub>x</sub> allowances under subsection (a)(2) and before May 1 of the year, the U.S. EPA shall determine the extent that banked NO<sub>x</sub> allowances may be used for compliance in the control period for the current year, as follows:**

**(1) The U.S. EPA shall determine the total number of banked NO<sub>x</sub> allowances held in compliance accounts, overdraft accounts, or general accounts.**

**(2) If the total number of banked NO<sub>x</sub> allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the trading program budget for the control period, any banked NO<sub>x</sub> allowance may be deducted**



for compliance in accordance with section 10(k) of this rule.

(3) If the total number of banked NO<sub>x</sub> allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the trading program budget for the control period, any banked allowance may be deducted for compliance in accordance with section 10(k) of this rule, except as follows:

(A) The U.S. EPA shall determine the following ratio:

(i) one tenth (0.10) multiplied by the sum of the trading program budget for the control period; and

(ii) divided by the total number of banked NO<sub>x</sub> allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts.

(B) The U.S. EPA shall multiply the number of banked NO<sub>x</sub> allowances in each compliance account or overdraft account by the ratio determined under clause (A). The resulting product is the number of banked NO<sub>x</sub> allowances in the account that may be deducted for compliance in accordance with section 10(k) of this rule. Any banked NO<sub>x</sub> allowances in excess of the resulting product may be deducted for compliance in accordance with section 10(k) of this rule, except that, if these NO<sub>x</sub> allowances are used to make a deduction, two (2) NO<sub>x</sub> allowances must be deducted for each deduction of one (1) NO<sub>x</sub> allowance required under section 10(k) of this rule.

(c) Any NO<sub>x</sub> budget unit may reduce its NO<sub>x</sub> emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the department may allocate NO<sub>x</sub> allowances in 2003 to the unit in accordance with the following requirements:

(1) Each NO<sub>x</sub> budget unit for which the owner or operator requests any early reduction credits under subdivision (4) shall monitor NO<sub>x</sub> emissions in accordance with 40 CFR 75, Subpart H\* starting in the 2000 control period and for each control period for which the early reduction credits are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the 2000 control period, and the unit must be in compliance with any applicable state or federal emissions or emissions-related requirements.

(2) The NO<sub>x</sub> emission rate and heat input under subdivisions (3) through (5) shall be determined in accordance with 40 CFR 70, Subpart H\*.

(3) Each NO<sub>x</sub> budget unit for which the owner or operator requests any early reduction credits under subdivision (4) shall reduce its NO<sub>x</sub> emission rate, for each control period for which early reduction credits are requested, to less than both of the following:

(A) Twenty-five hundredths (0.25) pound per million British thermal units.

(B) Eighty percent (80%) of the unit's NO<sub>x</sub> emission rate in the 2000 control period.

(4) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that meets the requirements of subdivisions (1) and (3) may submit to the department a request for

early reduction credits for the unit based on NO<sub>x</sub> emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with subdivision (3). The request shall include the following:

(A) In the early reduction credit request, the NO<sub>x</sub> authorized account may request early reduction credits for the control period in an amount equal to the unit's heat input for the control period multiplied by the difference between the following:

- (i) Twenty-five hundredths (0.25) pound per million British thermal units.
- (ii) The unit's NO<sub>x</sub> emission rate for the control period, divided by two thousand (2,000) pounds per ton, and rounded to the nearest ton.

(B) The early reduction credit request must be submitted, in a format specified by the department, by October 31 of the year in which the NO<sub>x</sub> emission rate reductions on which the request is based are made or the later date approved by the department.

(5) The department shall allocate NO<sub>x</sub> allowances, to NO<sub>x</sub> budget units meeting the requirements of subdivision (1) and (3) and covered by early reduction requests meeting the requirements of subdivision (4)(B), in accordance with the following procedures:

(A) Upon receipt of each early reduction credit request, the department shall accept the request only if the requirements of subdivisions (1), (3), and (4)(B) are met and, if the request is accepted, shall make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of subdivisions (2) and (4) of this section.

(B) If the compliance supplement pool has an amount of NO<sub>x</sub> allowances equal to or greater than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002, as adjusted under clause (A), the department shall allocate to each NO<sub>x</sub> budget unit covered by the accepted requests one (1) allowance for each early reduction credit requested, as adjusted under clause (A).

(C) If the compliance supplement pool has an amount of NO<sub>x</sub> allowances less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002, as adjusted under clause (A), the department shall allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit covered by the accepted requests according to the following formula.

(i) A unit's allocated early reduction credits = ((unit's adjusted early reduction credits) ÷ (total adjusted early reduction credits requested by all units)) × (available NO<sub>x</sub> allowances from the compliance supplement pool) where:

(AA) Unit's adjusted early reduction credits is the number of early reduction credits for the unit for 2001 and 2002 in accepted early reduction credit requests, as adjusted under clause (A).

(BB) Total adjusted early reduction credits requested by all units is the number of early reduction credits for all units for 2001 and 2002 in accepted early reduction credit requests, as adjusted under clause (A).

(CC) Available NO<sub>x</sub> allowances from the compliance supplement pool is the number of NO<sub>x</sub> allowances in the compliance supplement pool and available for early reduction credits for 2001 and 2002.

(6) By May 1, 2003, the department shall submit to the U.S. EPA the allocations of NO<sub>x</sub> allowances determined under subdivision (5). The U.S. EPA shall record the allocations to the extent that they are consistent with the requirements of subdivisions (1) through (5).

(7) NO<sub>x</sub> allowances recorded under subdivision (6) may be deducted for compliance under subsection (k) for the control periods in 2003 or 2004. Notwithstanding subsection (a), the U.S. EPA shall deduct as retired any NO<sub>x</sub> allowance that is recorded under subdivision (6) and is not deducted for compliance in accordance with section 10(k) of this rule for the control period in 2003 or 2004.

(8) NO<sub>x</sub> allowances recorded under subdivision (6) are treated as banked allowances in 2004 for the purposes of subsections (a) and (b).

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-14*)

**326 IAC 10-3-15 Compliance supplement pool**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

*This section establishes a pool of NO<sub>x</sub> allowances and procedures to allocate these allowances to sources that cannot implement control measures by the compliance date of May 1, 2003.*

*The section also establishes the criteria and timing for distributing allowances based on early reduction or a demonstration of need.*

**Sec. 15. (a)** The department may allow sources required to implement NO<sub>x</sub> emission control measures by May 1, 2003, to demonstrate compliance in the 2003 and 2004 ozone seasons using credit issued from a compliance supplement pool in accordance with this section. A source may not use credit from the compliance supplement pool to demonstrate compliance after the 2004 ozone season.

**(b)** The department may distribute NO<sub>x</sub> allocations to sources that are required to implement control measures from the compliance supplement pool using one (1) or both of the following two (2) mechanisms:

**(1) The department may issue some or all of the compliance supplement pool to sources that implement emissions reductions during the ozone season beyond all applicable requirements in years prior to the year 2003 according to the following provisions:**

**(A) The department shall complete the issuance process by no later than May 1, 2003.**

**(B) The emissions reduction may not be required by Indiana's state implementation plan (SIP) or be otherwise required by the Clean Air Act (CAA).**

**(C) The emissions reduction must be verified by the source as actually having occurred during an ozone season between September 30, 1999, and May 1, 2003.**

**(D) The emissions reduction must be quantified according to procedures set forth in section 14(c) and 40 CFR 75, Subpart H\*.**

**(E) Sources that receive credit according to the requirements of this section may trade the credit to other sources or persons according to the provisions in the trading program.**

**(2) The department may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension of the May 1, 2003, compliance deadline according to the following provisions:**

**(A) The department shall initiate the issuance process by the later date of September 30, 2002, or after the department issues credit according to the procedures in subdivision (1).**

**(B) The department shall complete the issuance process by no later than May 1, 2003.**

**(C) The department shall issue credit to a source only if the source demonstrates the following:**

**(i) For a source used to generate electricity, compliance with the applicable control measures under this rule by May 1, 2003, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this rule.**

**(ii) For a source not used to generate electricity, compliance with the applicable control measures under this rule by May 1, 2003, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in item (i).**

**(iii) For a source subject to this rule and subdivision (1) that allows for early reduction credits, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.**

**(iv) For a source subject to an approved emissions trading program under this rule, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons**

subject to the emissions trading program.

**(D) The department shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a source under subdivision (C).**

**(c) The total number of NO<sub>x</sub> allowances available from the compliance supplement pool shall not exceed nineteen thousand seven hundred thirty-eight (19,738) tons of NO<sub>x</sub>. Any NO<sub>x</sub> allowances that remain in the compliance supplement pool after the 2004 control period shall be retired.**

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